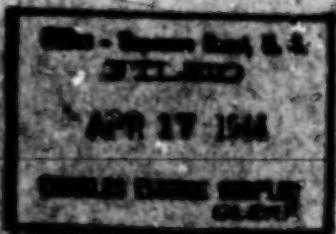


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No. 716, 717

Justia Supreme Court of the United States

October Term, 1943

THE UNITED STATES OF AMERICA, APPELLANT

v.

**Clyde Saylor, J. Henderson Brock, Jim Blanton
Saylor, and Alonso Wilson**

THE UNITED STATES OF AMERICA, APPELLANT

v.

**Clarence Poff, Sidney Solomon Poff, Odell
James Spethman, and Verlin Fee**

**APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF KENTUCKY**

BRIEF FOR THE UNITED STATES

INDEX

	Page
Opinions below.....	1
Jurisdiction.....	2
Question presented.....	2
Statute and constitutional provisions involved.....	3
Statement.....	5
Specification of errors to be urged.....	8
Summary of argument.....	9
Argument.....	14
A. The right of a duly qualified voter to cast a ballot for a candidate for election to Congress, without im- pairment by the "stuffing" of the ballot box with false and fictitious ballots for an opposing candidate, is a right secured by the Constitution of the United States.....	14
B. The constitutional right of a duly qualified voter to cast a ballot for a candidate for election to Congress, with- out impairment by the "stuffing" of the ballot box with false and fictitious ballots for an opposing candidate, is a right which Section 19 of the Criminal Code safe- guards to any such voter who is a citizen.....	23
(1) The language of Section 19.....	24
(2) The legislative history of Section 19.....	33
Conclusion.....	55
Appendix A.....	56
Appendix B.....	64
Appendix C.....	81
Appendix D.....	83

CITATIONS

Cases:

<i>Adkins v. Phipps</i> , 159 Ky. 349.....	29
<i>Baldwin v. Franks</i> , 120 U. S. 678.....	23
<i>Black v. Spillman</i> , 185 Ky. 201.....	30
<i>Coleman v. Miller</i> , 307 U. S. 433.....	31
<i>Cowan v. Prouse</i> , 93 Ky. 156.....	29
<i>Curley v. United States</i> , 130 Fed. 1, certiorari denied, 195 U. S. 628.....	47
<i>Dectoe v. United States</i> , 103 F. (2d) 584, certiorari denied, 308 U. S. 571.....	11, 32

(1)

Cases—Continued.

	Page
Duff v. Crawford, 124 Ky. 73	30
Emery v. Hennessy, 331 Ill. 296	9, 17, 21
Haas v. Henkel, 216 U. S. 462	47
Hogg v. Caudill, 254 Ky. 409	30
Jones v. Glidewell, 53 Ark. 161	30
Leser v. Garnett, 258 U. S. 130	31
Little v. Alexander, 258 Ky. 419	30
Lovely v. Cockrell, 237 Ky. 547	28
Major v. Barker, 99 Ky. 305	30, 32
Nixon v. Condon, 286 U. S. 73	31
Nixon v. Herndon, 273 U. S. 536	31
Noble v. Bowman, 249 Ky. 343	30
Powe v. United States, 109 F. (2d) 147, certiorari denied, 309 U. S. 679	23
Scalf v. Pursifull, 250 Ky. 447	29
Scholl v. Bell, 125 Ky. 750	10, 21, 30
Smith v. Allwright, Oct. Term, 1943, No. 51	31
Swafford v. Templeton, 185 U. S. 487	31
Tunks v. Vincent, 106 Ky. 829	30
United States v. Bathgate, 246 U. S. 220	8,
	11, 25, 26, 27, 28, 30, 31, 33, 34, 35, 45
United States v. Birdsall, 233 U. S. 223	7
United States v. Classic, 313 U. S. 299	7,
	9, 10, 11, 12, 13, 15, 16, 22, 23, 24, 25, 28, 31, 32,
	34, 35, 37, 49, 52, 54.
United States v. Ellis, 43 F. Supp. 321	25
United States v. Gordon, 22 Fed. 250	47
United States v. Heinze, 218 U. S. 532	7
United States v. Kapp, 302 U. S. 214	7
United States v. Lepowitch, 318 U. S. 702	7
United States v. Mosley, 238 U. S. 383	9,
	10, 11, 15, 16, 21, 22, 23, 24, 25, 27, 28, 31, 34, 35,
	37, 44, 45, 48, 54.
United States v. Patten, 226 U. S. 525	7
United States v. Pleva, 66 F. (2d) 529	11, 32
United States v. Reese, 92 U. S. 214	34, 45, 51
United States v. Soeder, 10 F. Supp. 944	47
United States v. Stevenson, 215 U. S. 190	7
United States v. Stone, 135 Fed. 392	47
United States v. Terranova, 7 F. Supp. 989	47
Van Der Zee v. Means, 225 Ia. 871	29
Wiley v. Sinkler, 179 U. S. 58	31
Yarbrough, <i>Ex parte</i> , 110 U. S. 651	9, 13, 15, 52
Constitution and Statutes:	
Constitution:	
Art. 1, Secs. 2, 4	3, 4, 9, 15, 17, 23, 39
14th Amendment	16

III

Constitution and Statutes—Continued.

Constitution—Continued.

	Page
15th Amendment	16, 43
17th Amendment	4, 9, 15, 17, 23

Statutes:

Act of February 25, 1865 (c. 52, § 1, 13 Stat. 437)	50
Act of April 9, 1866 (c. 31, 14 Stat. 27)	55
Act of May 31, 1870 (c. 114, 16 Stat. 140)	28, 37, 63
Section 1	38, 50
Section 2	38, 50
Section 3	50
Section 4	34, 44, 50
Section 5	38, 43, 44
Section 6	12, 13, 33, 36, 39, 41, 42, 43, 44, 45, 46, 47, 49
Section 7	43
Section 16	40
Section 17	38, 40, 42, 48
Section 18	57
Section 19	12, 13, 34, 38, 45, 46, 47, 50
Section 20	38, 39, 50
Section 21	38, 50
Section 22	38
Section 23	38, 50
Act of July 14, 1870 (c. 254, §§ 5, 6, 16 Stat. 254)	38, 39, 81
Act of February 28, 1871 (c. 99, 16 Stat. 433)	38, 39, 50, 65
Section 1	50, 83
Section 10	50
Section 11	51
Section 18	82
Act of April 20, 1871 (c. 22, § 2, 17 Stat. 13)	51
Act of May 3, 1872 (c. 139, 17 Stat. 61)	38, 39
Act of June 10, 1872 (c. 415, 17 Stat. 347)	38, 39, 50
Act of February 8, 1894 (c. 25, 28 Stat. 36)	13,
33, 50, 65, 66, 67, 77, 78, 79, 80, 85, 86, 87, 89,	
90, 91, 92, 93, 94, 95, 97.	
Act of March 4, 1909 (c. 321, 35 Stat. 1088)	67, 68, 72, 74
Revised Statutes:	
Section 27 (2 U. S. C. 9)	102
Section 629 (28 U. S. C. 41 (2))	69, 98
Sections 643, 646	101
Sections 645, 950 (28 U. S. C. 769)	102
Section 722 (28 U. S. C. 729)	58, 75
Section 1022 (18 U. S. C. 555)	69
Section 1786 (5 U. S. C. 14a)	73
Section 1787	74
Sections 1977, 2164 (8 U. S. C. 41, 135)	75
Sections 1978, 1992 (8 U. S. C. 42)	57
Sections 1982-1983 (8 U. S. C. 49, 50)	60, 70
Sections 1984-1985 (8 U. S. C. 50, 51)	61, 71

IV

Constitution and Statutes—Continued.

Statutes—Continued.

Revised Statutes—Continued.

	Page
Sections 1986-1989 (8 U. S. C. 52-55)	63, 73
Section 2002	50
Section 2004 (8 U. S. C. 31)	64
Sections 205-2081	50
Sections 2005-2008	50, 65, 68
Sections 2007-2009	50
Section 2009	50, 67
Section 2010	50, 80
Sections 2011-2031	50
Sections 2011-2014	86
Section 2016	87
Sections 2017-2018	89
Section 2019	90
Section 2020	91
Sections 2021-2022	92
Section 2023	93
Section 2024	95
Sections 2025-2027	97
Section 3689 (31 U. S. C. 711)	98
Section 5506	34, 50, 52, 67
Section 5507	67
Section 5508	13, 36, 42, 48, 50, 51, 52, 53, 68
Section 5509	68
Section 5510	42, 48, 50, 51, 52, 53, 75
Section 5511	13, 33, 77
Sections 5511-5515	50, 52
Section 5512	78, 85
Section 5513	85
Section 5514	79
Section 5515	80
Section 5516	72
Section 5517	71
Sections 5520-5523	50
Sections 5521-5523	50, 94, 95
Criminal Code:	
Section 19 (18 U. S. C. 51)	2, 3, 10, 11, 12, 14, 23, 24, 25, 27, 28, 30, 31; 32, 33, 34, 35, 36, 39, 41, 42, 48, 49, 50, 56, 68
Section 20 (18 U. S. C. 52)	16, 40, 42, 43, 48, 49, 50, 56
Section 37 (18 U. S. C. 88)	47
Section 141 (18 U. S. C. 246)	72
Section 6 of the Constitution of Kentucky	10
Kentucky Revised Statutes (1942), § 124, 190	28
Miscellaneous:	
Cong. Globe, 41st Cong., 2d sess. (1870) :	
3503-3504	37, 39
3611	39

V

Miscellaneous—Continued.

	Page
Cong. Globe, 41st Cong., 2d sess. (1870)—Continued.	
3612	39
3658	41
3663-3664	38
3672	41
3673	38
3678	38
3690	41
3752-3753	38
3809	38
3884	38
Cong. Globe, 41st Cong., 3d sess. (1871) :	
1272	39
1275-1276	39
1277-1278	39
1280	39
1283-1284	39
1632-1637	39
H. Rep. No. 18, 53d Cong., 1st sess., H. R. 2331	51
25 Cong. Rec. 1803-1823, 1855-1864; 1897-1906, 1937- 1963, 1987-2001, 2018-2049, 2080-2100, 2138-2150, 2158-2183, 2212-2258, 2272-2294, 2296-2327, 2338- 2360, 2375-2378	51
26 Cong. Rec. 382-384, 868-876, 925-934, 980-983, 1227- 1231, 1237-1240, 1313-1325, 1380-1384, 1447-1452, 1580-1592, 1632-1639, 1858-1877, 1925-1941, 1976-1999	51
43 Cong. Rec. 3598-3599	54



In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 716

THE UNITED STATES OF AMERICA, APPELLANT

v.

CLYDE SAYLOR, J. HENDERSON BROCK, JESS BLANTON
SAYLOR, AND ALONZO WILSON

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v.

CLARENCE POER, SIDNEY SOLOMON POPE, ODELL
JAMES SHEPHERD, AND VERLIN FEE

APPEALS FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF KENTUCKY

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The memorandum opinions of the district court
(No. 716, R. 7-10; No. 717, R. 8-10) are un-
reported.

JURISDICTION

The judgments of the district court sustaining demurrers to the indictments were filed on December 20, 1943 (No. 716, R. 7; No. 717, R. 7-8). The orders allowing appeals were filed on January 18, 1944 (No. 716, R. 10; No. 717, R. 10-11). Probable jurisdiction was noted by this Court on March 6, 1944, and the two cases were consolidated for hearing (R. 14).¹ The jurisdiction of this Court is conferred by the Act of March 2, 1907, 34 Stat. 1246 (as amended by the Act of May 9, 1942, 56 Stat. 271), 18 U. S. C. 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code (as amended by the Act of February 13, 1925, 43 Stat. 936), 28 U. S. C. 345.

QUESTION PRESENTED

Whether the concerted action of state election officials in "stuffing" ballot boxes, whereby duly qualified citizens voting for a candidate for election as United States Senator are deprived of the full value of their votes by virtue of the casting of false and fictitious ballots for the opposing candidate, is an impairment of the free exercise or enjoyment by such citizens of a right or privilege secured to them by the Constitution or laws of the United States, within the meaning of Section 19 of the Criminal Code (18 U. S. C. 51).

¹ The two records are for the most part identical; and a single reference denotes the same page in both records.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

Section 19 of the Criminal Code (18 U. S. C. 51) provides:

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States.

Article I, Sections 2 and 4, of the Constitution provides in part:

SECTION 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not,

when elected, be an Inhabitant of that State in which he shall be chosen.

* * * * *

SECTION 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

* * * * *

The Seventeenth Amendment to the Constitution provides:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

STATEMENT

The respondents in both cases were indicted (R. 1-6) at the November, 1943 Term of the United States District Court for the Eastern District of Kentucky, under Section 19 of the Criminal Code (*supra*, p. 3), for conspiracy to deprive duly qualified citizens voting at an election held on November 3, 1942, for the purpose of electing a United States Senator, of their right to have their ballots "freely, and fairly cast, counted, and certified and accorded and given full value and effect" (R. 4). The respondents Clyde Saylor and Brock acted as the duly appointed and qualified election judges in Molas precinct No. 32, Harlan County, Kentucky (No. 716, R. 2) and the respondents Poer and Pope served in the same capacity in Pansy precinct No. 53-A, Harlan County, Kentucky (No. 717, R. 2); the respondents Jess Blanton Saylor and Wilson were, respectively, the clerk and sheriff of the election in Molas precinct No. 32 (No. 716, R. 2), and the respondents Shepherd and Fee served respectively in the same capacities in Pansy precinct No. 53-A (No. 717, R. 2). The indictments set forth that many persons, who were citizens and residents of the United States and of Harlan County, Kentucky, were entitled by the laws of Kentucky and the Constitution of the United States to vote at the election in these precincts, for a duly qualified candidate for United States Senator, and that such

persons did vote for the duly qualified Republican candidate (R. 1-3). The indictments then proceed to charge that the defendants respectively named therein "did unlawfully, wilfully, knowingly, and feloniously conspire" to deprive the voters for the Republican candidate of the free exercise and enjoyment of the rights and privileges secured to them by the Constitution of the United States, in that such defendants did agree to, and did, remove a large number of blank ballots from the official stub, poll and ballot book, mark and vote the same for the Democratic candidate for United States Senator, forge and write the name of some fictitious voter on the stub book at the place where each of such ballots had been removed, and make a false and fraudulent return of said ballots, stubs, and ballot book to the county clerk's office to be delivered to the County Board of Election Commissioners, with the effect of causing the Board "to count, return, and certify that the Democratic candidate for said office of United States Senator had received more votes than had been cast for said candidate" (R. 3-6). This, the indictments charged, "impaired, lessened, diminished, diluted, and destroyed the integrity and effectiveness of the ballots and choice of said voters [for the Republican candidate] as expressed by their ballots" (R. 5).

Respondents demurred to the indictments on the ground, *inter alia*, that they did not state facts

sufficient to constitute a crime against the United States (R. 6-7). In sustaining the demurrers the district court held that Section 19 of the Criminal Code "as properly interpreted and construed, does not apply to the offenses charged to have been committed by the defendants" (R. 7). In supplemental memorandum opinions, the purpose of each of which was "to make it clear that the judgment of the Court in sustaining the demurrer was based solely upon the construction of section 19 of the Criminal Code" ² (No. 716, R. 7; No. 717, R. 8), the district court ruled that there is "no Federal statute which covers the reprehensible election fraud commonly referred to as 'ballot-box stuffing'" (R. 10); and that "the right of qualified voters, at a Congressional election, to have the full value and effect of their votes secured free from impairment or dilution by forged or fictitious ballots, fraudulently cast and counted for a candidate opposed to the candidate for whom they voted, is [not] a Constitutional right to which Congress intended to afford protection by

²Since the district court ruled that the facts alleged in the indictments do not fall within the purview of Section 19, and expressly acknowledged that the rulings were based "solely" upon a construction of the statute, they are subject to review by this Court on direct appeals. *United States v. Lepowitch*, 318 U. S. 702, 703-704; *United States v. Classic*, 313 U. S. 299, 309; *United States v. Kapp*, 302 U. S. 214, 217; *United States v. Birdsall*, 233 U. S. 223, 230; *United States v. Patten*, 226 U. S. 523, 535; *United States v. Heinz*, 218 U. S. 532, 540; *United States v. Stevenson*, 215 U. S. 190, 194-195.

the provisions of section 19 of the Criminal Code of the United States" (R. 9). The district court regarded the cases as controlled by this Court's decision in *United States v. Bathgate*, 246 U. S. 220, holding that a conspiracy to bribe voters at a general Congressional election is not within the purview of Section 19 (R. 9-10).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred:

1. In holding that no federal statute has any application to "ballot-box stuffing."
2. In holding that "the right of qualified voters, at a Congressional election, to have the full value and effect of their votes secured free from impairment or dilution by forged or fictitious ballots fraudulently cast and counted for a candidate opposed to the candidate for whom they voted," is not a constitutional right to which Congress intended to afford protection by Section 19 of the Criminal Code.
3. In holding that Section 19 has no application to the offense of conspiring to cause a false count of the votes cast at an election, held for the purpose of electing a United States Senator, by placing in the ballot boxes false and fictitious ballots;
4. In sustaining the demurrers to the indictments.

SUMMARY OF ARGUMENT

A. The constitutional character (under Art. I, Secs. 2, 4; 17th Amend.) of the right of a voter, qualified by state law, to cast a ballot for a congressional candidate and to have that ballot counted as cast, is well established. Subject to other constitutional provisions, the members of the class entitled to exercise the right are determined by state laws, but the right of a member of the class so defined is conferred and protected by the federal Constitution. *Ex parte Yarbrough*, 110 U. S. 651; *United States v. Mosley*, 238 U. S. 383; *United States v. Classic*, 313 U. S. 299.

The constitutional right to cast a ballot for a congressional candidate and to have that ballot counted for the candidate for whom it was cast includes a right that it be given its full value and effect in the election, unimpaired by the "stuffing" of the ballot-boxes with false and fictitious ballots for an opposing candidate. The constitutional right is concerned with substance, not with forms. The effects of casting spurious ballots, and of altering or failing to count ballots properly cast, are virtually identical. Each spurious ballot cast for one candidate nullifies a ballot validly cast for another candidate, and diminishes the proportionate weight to which every ballot properly cast is entitled. Where spurious voting in a precinct causes the returns of that precinct to be rejected, as in *Emery v. Hennessy*, 331 Ill. 296 (1928), and

Scholl v. Bell, 125 Ky. 750 (1907), the effect is to disfranchise, in the particular election, every voter in the precinct. Where spurious voting changes the outcome of an election, it denies to every voter for the loser the whole value of his ballot, and denies to everyone concerned the right of representation by the majority's choice. In all cases it denies to every qualified voter the right to participate on a free and equal basis in a free and equal election—a right which, by its incorporation in Section 6 of the Constitution of the State of Kentucky, where the facts of the present cases occurred, is clearly a part of the right to vote in accordance with valid state laws which the federal Constitution guarantees. The right of protection from spurious ballots is therefore included within the federal right to cast a ballot for a congressional candidate and to have that ballot counted as cast.

B. Section 19 of the Criminal Code, which punishes conspiracies to injure or oppress citizens in the free exercise or enjoyment of federal rights, includes within its protection from such conspiracies the right of a citizen, in accordance with applicable state laws, to cast a ballot for a congressional candidate and to have that ballot counted as cast, *United States v. Mosley*, 238 U. S. 383; *United States v. Classic*, 313 U. S. 299; and by the same token it includes within its protection the right to cast a ballot without having its value

and effect destroyed or impaired by the "stuffing" of ballot-boxes with false and fictitious ballots. The effect of ballot-box "stuffing" upon the constitutional right to vote is direct and ascertainable. In this respect it is exactly similar to the alteration of ballots, as involved in the *Classic* case, and the failure to count ballots, as involved in the *Mosley* case, and differs materially from the bribery of voters that was held in *United States v. Bathgate*, 246 U. S. 220, to fall outside the scope of Section 19 for the reason that it was not found to impair a personal right such as the right to vote was conceded to be. The vote of a bribed voter, unlike a fictitious ballot, is his own vote which he is not barred from casting; and it is normally impossible to prove either that he voted in accordance with the bribe or that he would have voted any differently had it not been for the bribe. Such considerations are in no way applicable to ballot-box "stuffing."

Section 19 is not rendered inapplicable by reason of the fact that it may be impossible for any individual qualified voter to prove that it was his, rather than someone else's, vote that was disregarded. In the *Classic* case, as likewise in *United States v. Pleva*, 66 F. (2d) 529 (C. C. A. 2), and *Devoe v. United States*, 103 F. (2d) 584 (C. C. A. 8), certiorari denied, 308 U. S. 571, Section 19 was held applicable under circumstances that provided no greater possibility of such proof

than does the present case, since in all those cases it would have been impossible to prove *whose* ballots were the ones altered or otherwise not counted as cast. Section 19, like the rights which it protects, is concerned with substance, not with forms; and its application in the protection of a personal right does not depend on the particular method selected for violation of that right.

By its express language Section 19 protects "any" federal right or privilege, without exception. This Court in the *Classic* case has held that its language is "unambiguous," that the right protected by it is protected "regardless of the method of interference," and that it is no extension of the statute "to find a violation of it in a new method of interference with the right which its words protect" (313 U. S. at 322, 324). Moreover, its legislative history shows clearly that Congress at all times since 1870 has regarded conspiracies to violate the federal rights of citizens as of serious federal concern, calling for the enactment and retention of a statute carrying severe penalties, regardless of whether the contemplated acts, if done individually without concert of action or without the intent or effect of impairing the federal rights of citizens, would be separately punishable by federal law. Section 19 of the Enforcement Act of May 31, 1870 (c. 114; 16 Stat. 140), from Section 6 of which Section 19 of the Criminal Code has been derived, included ballot-box

"stuffing" within its coverage. But Section 19 of the original Act had no application to conspiracies as such, unaccompanied by the actual commission of the acts proscribed, and its application to the actual commission of the proscribed acts did not depend upon their having the effect of impairing the constitutional rights of citizens. This being true, the repeal by the Act of February 8, 1894 (c. 25, 28 Stat. 36) of Section 19 of the 1870 Act, as then embodied in Section 5511 of the Revised Statutes, in no way restricted the scope of Section 6 of the original Act, as then embodied in Section 5508 of the Revised Statutes, which the repealing Act of 1894 left standing, to be later reenacted as Section 19 of the Criminal Code. Ten years before the adoption of the repealing Act this Court, in *Ex parte Yarbrough*, 110 U. S. 651, 663-664, had expressed the same view of the nature of the federal right of suffrage and of the fact of its protection by Section 5508 of the Revised Statutes (Cr. Code § 19) that it later developed more fully in the *Classic* case. Congress thus was not unaware, in 1894, that its failure to repeal Section 5508 of the Revised Statutes left punishable by federal law conspiracies to violate federal rights by acts which, if done by individuals not acting in concert, were no longer so punishable, by virtue of the repeal of other provisions which had applied to them without regard to their effect upon federal rights otherwise con-

ferred. The legislative history, of both the original 1870 Act and the repealing Act of 1894, thus confirms the plain meaning of the unambiguous language of Section 19 of the Criminal Code. And, since ballot-box "stuffing" is a method of interference with the constitutional right to vote, not distinguishable in substance from the methods of interference held in the *Mosley*, *Classic*, *Pleva*, and *Devoe* cases to violate Section 19, it follows that Section 19 is applicable here.

ARGUMENT

THE DECISION BELOW, REMOVING FROM THE PROTECTION OF SECTION 19 RIGHTS SECURED BY THE CONSTITUTION OF THE UNITED STATES, IS WITHOUT ADEQUATE BASIS IN EITHER THE LANGUAGE OF THE STATUTE OR ITS LEGISLATIVE HISTORY. THE ACTS CHARGED IN THE INDICTMENTS ARE COVERED BY THE STATUTE.

A. *The right of a duly qualified voter to cast a ballot for a candidate for election to Congress, without impairment by the "stuffing" of the ballot-box with false and fictitious ballots for an opposing candidate, is a right secured by the Constitution of the United States.*³—It can hardly now be

³ The district court's opinions are not necessarily inconsistent with this proposition, which is, however, an essential premise of our argument. In our view the opinions of the district court hold that the right in question is not a constitutional right protected by Section 19 of the Criminal Code, rather than that it is not a constitutional right. Our position, as developed *infra*, at pages 23 *et seq.* is that, as a constitutional right, it is within the protection of Section 19.

disputed that the right of suffrage in the election of members of Congress,⁴ in accordance with the applicable state or federal laws, is a right secured by the Constitution of the United States (Art. I, Secs. 2, 4; 17th Amend.) and includes not merely the right to cast a ballot but likewise the right to have that ballot counted. *Ex parte Yarbrough*, 110 U. S. 651; *United States v. Mosley*, 238 U. S. 383; *United States v. Classic*, 313 U. S. 299. As the majority opinion in the *Classic* case points out (313 U. S. at 314-315), "The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by state action in conformity to the Constitution, is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the state entitled to exercise the right." * * * Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections. * * * And since the constitutional command is without restriction or limitation, the right, unlike those guaranteed by the Fourteenth and Fifteenth Amendments, is secured against the action of

⁴ We use the single phrase "members of Congress" to designate both Senators and Representatives, and the single phrase "congressional elections" to designate elections at which either a Senator or Representative or both are chosen.

individuals as well as of states." The dissenting opinions in the *Mosley* and *Classic* cases do not in the least respect deny the constitutional basis of the right of suffrage in congressional elections, nor that this constitutional right includes the right to have a ballot counted as well as cast.

The constitutional right to cast a ballot for a congressional candidate and to have it counted for that candidate includes, we submit, the right that it be given its full weight in the election, unimpaired by the casting of false and fictitious ballots for an opposing candidate. Equality in the exercise of suffrage is a basic element of the right of suffrage. Section 6 of the Constitution of Kentucky, expressly provides that "all elections shall be free and equal"—a guarantee which, indeed, by virtue of the Fourteenth and Fifteenth Amendments state laws would be powerless to abridge. The right to vote in accordance with the laws of Kentucky, which the Constitution of the United States guarantees to Kentucky voters in Congressional elections, thus is a right to vote in a free and equal election, on a free and equal basis.⁵ In

⁵ In the *Classic* case (No. 618, October 1940 Term, Brief for the United States, pp. 36-40, 43-47), the argument was made by the Government that the acts of the respondents in altering ballots, since they were done in connection with the performance of respondents' functions as state election officials, constituted state action in violation of rights secured by the Fourteenth Amendment and on that basis should be regarded as bringing the case within Section 19 of the Criminal Code (as well as within Section 20, 18 U. S. C. 52) as

applying a similar state constitutional provision to the very same fraud known as ballot-box "stuffing" that is here involved, the Supreme Court of Illinois, in *Emery v. Hennessy*, 331 Ill. 296, 301-302 (1928), has aptly said: "When the ballot-box becomes the receptacle of fraudulent votes the freedom and equality of elections are destroyed. That election is free and equal where all of the qualified electors in the precinct are carefully distinguished from the unqualified and are protected in the right to deposit their ballots in safety and unprejudiced by fraud. That election is not free and equal where the true electors are not separated from the false, where the ballot is not deposited in safety or where it is supplanted by fraud."

The constitutional right is concerned with realities, not with forms. In their effects upon a legally qualified voter's constitutional right to cast a free and equal vote in a free and equal election, there can be no real difference of substance between fraud in the form of failure to count ballots properly cast, and fraud in the form of "stuffing" the ballot-boxes with false and fictitious ballots not entitled to be cast. Where there are only two candidates, and a majority of all the

applied to respondents individually. That argument, while equally pertinent here, is unnecessary, since as indicated in the text there is here, as distinguished from the *Classic* case, no serious question of the inclusion in the Constitution (Art. I, §§ 2 and 4; Amend. 17) of the right charged to have been invaded, or of federal power to protect that right.

votes cast elects, the failure to count votes for one candidate will necessarily have no different or greater effect than the counting of an equal number of spurious votes for the other.* Where there are more than two candidates, and an ordinary plurality of all the votes cast elects, the effects of failure to count votes and of counting spurious votes may differ, depending upon the positions in the voting of the respective candidates who received votes omitted from the count or for whom spurious votes were cast; and indeed, the casting of spurious votes may have a more direct and greater effect, and provide a more workable method of influencing an election, than the failure to count an equal number of votes properly cast.[†]

* Thus, suppose that 200,000 votes are properly cast in an election with A and B as the opposing candidates. If each receives 100,000, the failure to count one vote for A, or the counting of one spurious vote for B, will have the effect of breaking the tie. If, of the 200,000 votes properly cast, A receives 100,001 and B 99,999, either the failure to count two of A's votes, or the counting of two spurious votes for B, will have the effect of turning the election won by A into a tie; and either the failure to count three of A's votes, or the counting of three spurious votes for B, will have the effect of making B the winner. So long as A and B are the only candidates, and a majority of the votes cast elects, the effects of the two types of fraud are identical.

† Thus, suppose that there are five candidates for a single office, that a simple plurality elects, and that of 200,000 votes properly cast A receives 70,000, B receives 60,000, C, 40,000, D, 20,000, and E, 10,000. As between A and B the situation is the same as that discussed in footnote 6 *supra*; that is, the number of votes that would have to be subtracted from A's total, in order to create a tie with or swing the election

This may also be true where a designated percentage of all the votes cast, or of the total number of registered voters, is required to elect.* In

to B, will be the same as the number of spurious votes which, if added to B's total without the subtraction of any votes from A's, would produce the same result. Of course, the addition of 10,001 spurious votes for C, D, or E, either individually or collectively, would not have the same result, of swinging the election to B, that the failure to count 10,001 of A's votes would have. However, the number of spurious votes required to elect either C, D, or E, while necessarily larger than the number of votes which, if subtracted from A's total, would result in the election of B, will not be as large as the total number of properly cast votes that would have to be omitted from the count in order to result in the election of C, D, or E. For example, in the case supposed, to be elected by the "spurious vote" method, C would require 30,001 spurious votes; D would require 50,001; and E would require 60,001. By the "failure to count" method, however, C's election would require the subtraction of 30,001 of A's votes and 20,001 of B's, or a total of 50,002; D's election would require the subtraction of 50,001 of A's votes, 40,001 of B's, and 20,001 of C's, or a total of 110,003; and E's election would require the subtraction of 60,001 of A's votes, 50,001 of B's, 30,001 of C's, and 10,001 of D's, or a total of 150,004.

It seems obvious that, especially where the votes properly cast are more evenly distributed among the several candidates than in the case supposed, the "spurious vote" method is a more workable and perhaps less detectable form of influencing the outcome of an election than the "failure to count" method. It requires a less exact gauging of the relative strength of all the opposing candidates.

* Thus, suppose that forty percent of the total number of votes cast is required to elect, and that of 200,000 votes properly cast A receives 75,000 and B receives 70,000. Here the addition of 8,333 spurious votes to A's total, or of 16,666 to B's, will make the recipient the winner, and render a run-off election unnecessary. But to enable A's 75,000 votes to constitute 40 percent of the total number of votes properly cast

every case each spurious vote cast for one candidate, whether it changes the outcome of the election or not, exactly offsets a vote properly cast for another candidate, and reduces the proportionate weight in the election of every vote properly cast. The effect in these respects is ascertainable with mathematical exactness.⁹ Wherever spurious votes are cast for one candidate, an equal number of voters for another candidate are deprived of the whole value of their votes, and every voter in the election is deprived of a portion of the weight of his own vote. Where the effect is to change the outcome of the election, every voter for the losing candidate is deprived of the whole value of his vote, and all voters at the election are deprived of their right of representation by the majority's choice, as effectively as though the majority's vote had not been counted at all.¹⁰ In the ultimate result, it makes no differ-

would require the omission from the count of at least 12,500 of the votes cast for other candidates; whereas to enable B's 70,000 votes to carry the election would require the omission from the count of at least 25,000 votes cast for other candidates, including at least 5,001 cast for A.

⁹ Thus, if 100 qualified persons vote in a precinct, each vote has a weight of one one-hundredth; and if 100 fictitious ballots are added, the value of each vote is reduced to one two-hundredths. Every spurious vote for one candidate exactly offsets a vote properly cast for his closest competitor among the votes properly cast.

¹⁰ The fact that the fictitious ballots, if ascertainable, may be declared invalid and not counted, does not show that no right has been violated, or that no injury has been done, but merely that the possibility of a specific remedy exists. How-

ence whether a vote properly cast is not counted, or is deprived of all value or diminished in value by the casting of a spurious vote to counteract it.

There is thus no tenable ground of distinction between the method of election fraud employed in the *Mosley* case and that involved here. In the *Mosley* case the second count of the indictment charged the making of a false return by omitting therefrom the returns of certain precincts. (238 U. S. at 385). Here the indictments charged (R. 4-5) the making of a false return by the inclusion therein of spurious votes from certain precincts. The effect on the properly cast vote of the duly qualified voter was the same, and the impairment

ever, where ballot-box "stuffing" is shown to have been done on a large scale in a given voting precinct, and it is impossible to ascertain the exact number of fictitious ballots cast, the result is that the entire returns from the precinct may properly be omitted from the count. *Emery v. Hennessy*, 331 Ill. 296, 301-302 (1928): "There is a distinction, in the nature of things, between particular illegal votes which may be proven and exactly computed, and the effect of fraudulently stuffing the ballot box by the election officials. * * * Where the election officials in a precinct participate in fraud to such an extent that it is impossible to determine the number of legal votes cast therein or for whom they were cast, the court will throw out and disregard that precinct and adjudge the election to the candidate receiving the highest number of legal votes cast in the other precincts in the territory in which the election was held. * * * Under the evidence in this case the county court was fully justified in rejecting the entire vote of the fifth precinct." See also *Scholl v. Bell*, 125 Ky. 750, 776 (1907). In such cases the effect of ballot-box "stuffing" is the disfranchisement of every single voter in the precinct in which it has occurred.

of his constitutional right was as great. And the *Classic* case likewise presents no relevant factual difference. There the indictment charged the making of a false return as a result of altering ballots so that they were marked and counted for a candidate other than those for whom they had been cast (313 U. S. at 308). The method thus used merely combines the methods of the *Mosley* case and of this case—i. e., by the single step of altering one ballot the defendants withdrew one properly cast vote from Candidate B (as in the *Mosley* case) and added one spurious vote to the count of Candidate A (as in this case). The combination of the two methods in one process simply increased the speed at which the election fraud progressed. To achieve the same result by the “spurious vote” method alone it would be necessary to cast two spurious ballots, rather than altering one. Nothing in either the majority or the minority opinion in the *Classic* case suggests that the constitutional protection against impairment of the right to vote depends upon such a quantitative detail.

On the basis of the *Mosley* and *Classic* decisions we submit, therefore, that the constitutional right to cast a ballot for a congressional candidate and to have it counted for that candidate includes a right to have the full value and effect of that ballot protected against impairment by the casting of false and fictitious ballots for an opposing candi-

date; and that the Constitution amply authorizes the statutory protection of such right.

B. *The constitutional right of a duly qualified voter to cast a ballot for a candidate for election to Congress, without impairment by the "stuffing" of the ballot-box with false and fictitious ballots for an opposing candidate, is a right which Section 19 of the Criminal Code safeguards to any such voter who is a citizen.*¹¹—The *Mosley* and *Classic* decisions not only establish that the right of suffrage in the election of members of Congress, in accordance with the applicable state or federal laws, is a right secured by the Constitution (Art. I, Secs. 2, 4; 17th Amend.) and includes the right to have one's ballot counted as cast; they also hold that a conspiracy to oppress a citizen in the exercise or enjoyment of that right, by omitting his ballot from the count or by counting it for a candidate other than the one for whom it was cast, is a violation of Section 19 of the Criminal Code. In Part A (*supra*, pp. 14-23) we have compared the effect of ballot-box "stuffing" with the effect of failure to count ballots properly cast, as in the *Mosley* case, and with the effect of altering

¹¹ The constitutional right is not necessarily limited to citizens, if the voting qualifications contained in applicable state or federal laws are not so limited. However, the conspiracy condemned by Section 19 is one to oppress "any citizen" in the enjoyment or exercise of rights conferred by the Constitution or laws of the United States. *Baldwin v. Franks*, 120 U. S. 678, 691-692; *Pove v. United States*, 109 F. (2d) 147, 149 (C. C. A. 5), certiorari denied, 309 U. S. 679.

ballots properly cast, as in the *Classic* case; and we have shown that the constitutional right to have a ballot counted as cast must necessarily include the right that it be given its full force and effect, unimpaired by the casting of false (and fictitious) ballots for an opposing candidate.

If our analysis is correct, it follows that the *Mosley* and *Classic* cases are equally clear authority for the conclusion that the constitutional right of suffrage is protected by Section 19 against infringement by the particular device employed in this case. This conclusion could be avoided only if, notwithstanding the essential similarity of ballot-box "stuffing" to the fraudulent methods employed in those cases, some controlling reason is to be found either in the language of Section 19, or in its legislative history, for excluding that particular form of election fraud from its protection. We submit that no such reason exists.

(1) *The Language of Section 19.*—

Section 19 by its express terms covers any conspiracy of two or more persons to injure or oppress any citizen in the free exercise or enjoyment of "any" right or privilege secured to him by the Constitution or laws of the United States. The language thus on its face admits of no exception or exemption. This Court in the *Classic* case found it to be "unambiguous" (313 U. S. at 322), and the dissenting opinion in that case did not, as we understand it, undertake to cast doubt on

the propriety of the Court's views as to the scope of the protection of constitutional rights afforded by Section 19 to voters at final elections, as distinguished from primaries.¹² From the language of the section itself, therefore, "it is apparent that the Congress in enacting this law intended it for the protection of the free enjoyment of any right or privilege under the Constitution or laws of the United States." *United States v. Ellis*, 43 F. Supp. 321, 323 (W. D. S. C.).

Accordingly, we submit that the language of Section 19 leaves no room for the conclusion of the court below that its scope is not sufficiently broad to protect the citizens' right to vote at congressional elections against impairment by a conspiracy to stuff the ballot box. In so holding, the court below relied mainly on the decision of this Court in *United States v. Bathgate*, 246 U. S. 220, to the effect that the section does not cover a conspiracy to bribe voters at a congressional election. We believe that the court below misunderstood the decision in the *Bathgate* case, and incorrectly.

¹² While stating that the *Mosley* decision "went to the verge when it held that § 19 and the relevant constitutional provisions made it a crime to fail to count votes cast at a general election" (313 U. S. at 334), the *Classic* dissent, as we view it, does not contend that the *Mosley* decision should be overruled, or deny either the constitutional basis of the right involved or the fact of an infringement of such right; its disagreement with the majority seems to be limited to the issue of construing Section 19 to extend to voters at primary elections the protection of constitutional rights which it concededly afforded to voters at final elections.

applied it to the facts of the case at bar. The essential differences become apparent upon analysis.

In the *Bathgate* case the contention of the Government, as summarized by the Court (246 U. S. at 226), was "that lawful voters at an election for presidential electors, senator and members of Congress and also the candidates for those places have secured to them by Constitution or laws of the United States the right and privilege that it shall be fairly and honestly conducted", and that Section 19 protects this right against "conspiracy to influence voters by bribery". Without discussing the nature of the right asserted, the Court said (246 U. S. at 226-227): "The right or privilege to be guarded [by Section 19], as indicated both by the language employed and context, was a definite, personal one, capable of enforcement by a court, and not the political, non-judiciable one common to all that the public shall be protected against harmful acts, which is here relied on." But though thus holding that the individual has no right, protected by Section 19, to engage in elections untinged by bribery, the Court in the very next sentence reiterated with approval the doctrine of the *Mosley* case applying the section to infringement of the individual right to vote: "The right to vote is personal and we have held it is shielded by the section in question. *Ex parte Yarbrough*, 110 U. S. 651; *United States v. Mosley*, *supta.* * * *" (246 U. S. at 227).

The *Bathgate* case thus has, as we read it, no tendency to restrict the scope accorded by the *Mosley* case to Section 19. As we have shown, under the latter case the individual voter is protected in his right to cast his vote and to have it counted as cast. Without in any way impairing the validity of our contention that that doctrine applies as much here as it did to the facts before the Court in the *Mosley* case, we may accept—and for the purposes of this case we do accept—the conclusion of the *Bathgate* case that the individual voter has no “definite, personal” right to have congressional elections conducted without interference by bribery or other forms of corruption.¹² Consideration of the nature and consequences of bribery—as contrasted with the actual falsification of returns—shows an obvious rational basis for distinction between the two situations.

Bribery, of course, corrupts the integrity of elections. It is damaging to the public interest and, generally, criminal. It may improperly influence or even control the result of elections, and we be-

¹² The result might well be otherwise if the acceptance of a bribe by a voter constituted an absolute disqualification of the voter from voting, since then his ballot would stand in the same case as a forged or fictitious ballot, and if cast and counted would *pro tanto* defeat the personal right of qualified voters to have their own votes given full weight. But no attempt was made to show in the *Bathgate* case that such a situation obtained under the relevant state law, and the case therefore does not exclude the possibility that if, such a showing were made Section 19 might be held applicable.

lieve there is no question of the power of the Federal Government to punish its use in elections to federal office.¹⁴ But vicious as bribery is, there are certain clear differences between its effect on the individual, personal right of the honest voter which is protected by Section 19, and the effect which the practices adopted in the *Mosley* case, the *Classic* case, and this case have on that same right. These differences, we believe, are sufficient to explain the decision in the *Bathgate* case without in any way weakening the conclusion that the personal right to vote is protected by Section 19 against interference in the form of ballot-box "stuffing."

In the first place, a voter who has accepted a bribe is not necessarily by that fact excluded from the right to vote. His vote, even though it may have been illegally secured, is still his own vote, which is the absence of a disqualifying statute he is constitutionally entitled to cast.¹⁵ It is true that as a general rule his vote is to be excluded from the count of the candidate guilty of the

¹⁴ As pointed out in the opinion in the *Bathgate* case (246 U. S. at 226), bribery in congressional elections was at one time covered by another section of the Enforcement Act of May 31, 1870, in which the present Section 19 of the Criminal Code originated. See pp. 4-4, *infra*.

¹⁵ See footnote 13, *supra*, p. 27. In Kentucky, for instance, although acceptance of a bribe is by statute made a crime and a disqualification from suffrage (Kentucky Revised Statutes (1942), § 124.190), the disqualification is apparently effective only upon criminal conviction. See *Lorely v. Cockrell*, 237 Ky. 547, 550 (1931).

bribery,"¹⁶ but it has been held that an election carried by the inclusion of votes proved to have been procured by bribery will nevertheless not be invalidated in the absence of proof that the bribe was given, approved, acquiesced in, or ratified by the candidate for whom the vote was cast.¹⁷ Under these decisions a bribed vote is one which, at least under some circumstances, may legally be cast and counted, notwithstanding the illegality of the bribery itself, and to that extent it may be difficult to sustain any claim that the personal right of the honest citizen to vote, as distinguished from the general public interest in free and fair elections, has been illegally impaired by the act of bribery.

Furthermore, as a practical matter the precise effect of bribery on the personal right of the unbribed voter may be more difficult to demonstrate than here. The bribed voter still retains his freedom of choice, and has all the benefit of the secrecy of the ballot booth, so that it may be virtually impossible to prove that he fulfilled his bargain,¹⁸ or that he would have voted any differently if it had not been for the bribe.

¹⁶ *Noble v. Bowman*, 249 Ky. 343, 346 (1933); *Adkins v. Phipps*, 159 Ky. 349, 353 (1914); *Cowan v. Prouse*, 93 Ky. 156, 168-169 (1892).

¹⁷ *Van der Zee v. Means*, 225 Ia. 871, 879-880, 281 N. W. 460, 463, 465 (1938); *Scalf v. Pursifull*, 250 Ky. 447, 449-450 (1933).

¹⁸ In fact, one of the arguments for the secret ballot is that it checks bribery through the uncertainty that the bribed

Bribery, consequently, though no less deleterious to the public interest than ballot-box "stuffing," differs both legally and practically from the latter in its impact on the *personal rights* of citizens which this Court held in the *Bathgate* case to be the only rights protected by Section 19. The effect of the latter, as we have shown (*supra*, pp. 17-22), is mathematically demonstrable; the reality and extent of its interference with the individual rights of others to vote are susceptible of positive and definite proof. It constitutes, in a sense in which it may be conceded that bribery (at least in the absence of a disqualifying statute) does not, a

party will vote as he promised." *Jones v. Glidewell*, 53 Ark. 161, 170 (1890). A person who is not disqualified from suffrage is protected by the secrecy of the ballot booth, which goes so far as to prohibit even his willing testimony as to how he voted. *Jones v. Glidewell*, *supra*, at p. 172; *Major v. Barker*, 39 Ky. 305, 310 (1896); *Little v. Alexander*, 258 Ky. 419, 422 (1934). On the other hand, this absolute privilege does not apply in favor of one who votes without being legally qualified for suffrage, although in such a case the privilege against self-incrimination is ordinarily applicable. *Hogg v. Caudill*, 254 Ky. 409, 412 (1934); *Block v. Spillman*, 185 Ky. 201, 207 (1919); *Scholl v. Bell*, 125 Ky. 750, 756 (1907); *Tunks v. Vincent*, 106 Ky. 829, 836-837 (1899). As we have shown (*supra*, footnote 15), a bribed voter is not as such disqualified from suffrage; and we have found no case holding that he is not entitled to the privilege based on the secrecy of the ballot booth. Cf. *Noble v. Bowman*, 249 Ky. 343, 346 (1933), where the court, in allowing proof of how bribed voters voted, emphasized that the voting was *viva voce*. The burden of proving how illegal votes were cast is on the one contesting the election. *Duff v. Crawford*, 124 Ky. 73, 77-78 (1906).

method of direct impairment of a personal right. The right to vote, as even the decision in the *Bathgate* case recognized (246 U. S. at 227), is personal in character, and protected by Section 19; and that the right not only to vote but to have one's vote counted without offset by illegal ballots is also personal in character is illustrated by cases such as *Leser v. Garnett*, 258 U. S. 130. See *Coleman v. Miller*, 307 U. S. 433.¹⁹

Nor is Section 19 rendered inapplicable by the fact that the particular means by which the fraud was accomplished, and the right to vote impaired, was not such as to make it possible for any individual voter to establish that it was his, as distinguished from someone else's, vote that was vitiated. While that might have been possible for the voters defrauded in the *Mosley* case (where all votes from certain precincts were omitted from the count), it would have been as impossible in the *Classic* case as here.²⁰ The same is true of the devices used in two other cases in which Sec-

¹⁹ The personal character of the right is further illustrated by the decisions holding that its denial is a basis for personal damage actions. *Nixon v. Condon*, 286 U. S. 73; *Nixon v. Herndon*, 273 U. S. 536, 540; *Swafford v. Templeton*, 185 U. S. 487, 491, 492; *Wiley v. Sinkler*, 179 U. S. 58, 63-64; *Smith v. Allwright*, Oct. Term, 1943, No. 31, decided April 3, 1944.

²⁰ Although the *Classic* case involved the alteration of specific valid ballots cast by individual qualified voters, lack of distinguishing marks on the ballots, as required by the election laws, would have made it impossible to prove whose ballots had been altered. Furthermore, it has been held that

tion 19 has been applied by lower courts. In *United States v. Pleva*, 66 F. (2d) 529 (C. C. A. 2), election inspectors called incorrect tallies off the backs of voting machines, arbitrarily increasing the vote for some candidates and lowering it for others, without any demonstrated relation between the amounts of the increases and decreases. In *Devoe v. United States*, 103 F. (2d) 584 (C. C. A. 8), certiorari denied, 308 U. S. 571, the inspectors returned arbitrarily prearranged totals for the various candidates, without reference to the actual number of ballots cast (which had, in any event, been padded by the addition of "ghosts and sleepers"—fictitious ballots in the names of nonexistent, dead, or absent persons). In the latter case the court said (at 587-588): "In so far as the joint action of the defendants was designed to and did deprive the voters of that precinct of their right to an honest count and to an honest certification of the ballots cast for Congressional candidates, it was a violation of Section 19 of the Criminal Code."

That ballot-box "stuffing" may vary slightly in technique from alteration of or failure to count votes properly cast does not render it any less subject to the statute than those methods of accomplishing the same interference with the right to vote. In the words of the *Classic* decision, it "is

a voter cannot testify how he voted, even for the purpose of proving that his ballot has been altered. *Major v. Barker*, 99 Ky. 305, 310 (1896); and see fn. 18, *supra*; p. 29.

no extension of the criminal statute . . . to find a violation of it in a new method of interference with the right which its words protect. For it is the constitutional right, regardless of the method of interference, which is the subject of the statute and which in precise terms it protects from injury and oppression" (313 U. S. at 324). We submit, therefore, that nothing in the language of Section 19 justifies narrowing its scope so as to exclude from its operation a conspiracy to interfere with the right to vote at congressional elections merely because the conspirators adopted ballot-box "stuffing" instead of some other and no more effective means to effectuate the ends of the conspiracy.

(2) *The Legislative History of Section 19.*—

Section 19 of the Criminal Code is derived from Section 6 of the Enforcement Act of May 31, 1870 (c. 114, 16 Stat. 140). In holding that Section 19 does not cover conspiracy to bribe voters at a Congressional election, this Court in its opinion in the *Bathgate* case emphasized (246 U. S. at 226) that bribery had been expressly denounced by another section of the original Act (See. 19; R. S. § 5511), and it drew the inference from the repeal of that section by the Act of February 8, 1894 (c. 25, 28 Stat. 36) that Congress intended as well to withdraw from federal concern conspiracies to corrupt federal elections by means of bribery.

While as noted above (p. 27) we do not for the purposes of this case challenge the correctness

of the decision in the *Bathgate* case, we do not accept this particular phase of the Court's reasoning therein. Bribery in federal elections was, as there noted, covered by Section 19 of the original act; but so were the forms of election fraud employed in the *Mosley* case, the *Classic* case, and this case.²¹ And, as pointed out in the dissenting opinion in the *Classic* case (313 U. S. at 334), the offenses charged in the *Mosley* and *Classic* cases were likewise covered by another section of the original Act (Sec. 4; R. S. § 5506) which also was repealed in 1894.²² These acts of repeal cannot

²¹ Section 19 of the Enforcement Act of May 31, 1870, made it a crime if any person should at a congressional election, among other things: "personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious [the device used here (R. 3-5)]; * * * or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter * * * from freely exercising the right of suffrage [emphasis supplied; this was the effect attributed by this Court to the devices used in the *Mosley* and *Classic* cases] * * *; or by any * * * unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same [the purpose and effect of the conspiracy involved in all three cases].

²² Section 4, which before its repeal had been declared unconstitutional by this Court in *United States v. Reëse*, 92 U. S. 214, because not limited to federal elections, made it unlawful for any person "by force, bribery, threats, intimidation, or other unlawful means, [to] hinder, delay, prevent, or obstruct, or [to] combine and confederate with others to hinder, delay, prevent, or obstruct, any citizen * * * from voting at any election. * * *"

therefore be regarded as narrowing the scope of Section 19 of the Criminal Code without impugning fundamentally the correctness of the decisions in the *Mosley* and *Classic* cases, which even the dissent in the *Classic* case did not in this respect undertake to do.²² Moreover, we believe that analysis of the legislative history of Section 19 of the Criminal Code shows that the implication drawn in the *Bathgate* case as to congressional intention is insupportable.

A more realistic appreciation of the scope and purpose of Section 19 of the Criminal Code is shown in this Court's opinion in the *Mosley* case. There, Mr. Justice Holmes pointed out (238 U. S. at 387-388) that Section 4 of the original Act (*supra*, footnote 22, page 34) "dealt *only with elections*, and although it dealt with them generally and might be held to cover elections of Federal officers, it extended to *all elections*"; that, on the other hand, Section 6 (Section 19 of the Criminal Code) found its source "in the doings of the Ku Klux and the like" and that in this section Congress therefore naturally "put forth all its powers" and dealt "with all Federal rights, and protected them in the lump" from conspiracies against them; that Section 6 "being devoted * * * to the protection of all Federal rights from conspiracies

²² See footnote 12, *supra*, p. 25; the *Classic* dissent concerned itself with the propriety of construing Section 19 to apply to primaries for the selection of candidates for federal office, as distinguished from final federal elections.

against them, naturally did not confine itself to conspiracies contemplating violence, although under the influence of the conditions then existing it put that class in the front"; that when Congress later transposed Section 6 of the original Act into Section 5508 of the Revised Statutes (now Section 19 of the Criminal Code, without subsequent change) it relegated acts of violence to a subordinate position, and thereby gave the general words of the section "a congressional interpretation"; and that, just as the Fourteenth Amendment "was adopted with a view to the protection of the colored race but has been found to be equally important in its application to the rights of all," so likewise Section 6 "had a general scope and used general words that have become the most important now that the Ku Klux have passed away." [All emphasis supplied.]

And just as the original emphasis of Section 6 upon crimes of violence did not mean that the section in its later reenactments was to be regarded as confined to such crimes, so the later repeal of many sections of the Enforcement Act and cognate legislation dealing with specific offenses against elections did not serve to limit the scope of Section 6 (now Section 19 of the Criminal Code) as a weapon against conspiracies to violate *any* federal rights of citizens. The legislative history shows, we believe, that Congress in 1870 and at all times since has regarded *conspiracies*

to violate the federal rights of citizens, by whatever means, as of serious federal concern, calling for the enactment and retention of a statute imposing severe penalties, regardless of whether the contemplated acts would be separately punishable under some other provision of federal law if done individually without concerted action, or on some other basis than their direct effect upon the federal rights of citizens. And, more specifically, we believe that Congress, when in 1894 it repealed most of the provisions of the original Enforcement Act and other legislation governing elections and at the same time preserved R. S. 5508 (Section 6 of the original Act) without amendment, intended to retain that section as a weapon against conspiracies to violate federal rights by means of ballot-box "stuffing" just as much as against conspiracies to violate such rights by the similar means involved in the *Mosley* and *Classic* cases. A detailed review of the legislative history will make this plain.

The Enforcement Act of May 31, 1870, was entitled "An Act to enforce the Right of Citizens of the United States to vote in the several states of this Union, and for other Purposes." The bill that originally passed the House was primarily a measure to provide for the federal enforcement of the right of colored citizens of the United States to vote in all elections.²⁴ The bill that was

²⁴ Cong. Globe, 41st Cong., 2d. Sess., 3503-3504 (1870).

finally enacted, together with the subsequent Acts of July 14, 1870 (c. 254, §§ 5, 6, 16 Stat. 254), February 28, 1871 (c. 99, 16 Stat. 433), May 3, 1872 (c. 139, 17 Stat. 61), and June 10, 1872 (c. 415, 17 Stat. 347, 348), provided comprehensively for the federal enforcement of the right of United States citizens to vote in all elections and for the federal regulation and supervision of all elections in which a member of Congress was to be chosen.²⁵

It is clear that the Act of May 31, 1870, as finally passed, was something more than a measure to enforce the Fifteenth Amendment. The bill, in the form in which it originally passed the

²⁵ For the convenience of the Court we are setting forth in Appendices A-D the full text of the relevant portions of these statutes, with footnote indications as to the ultimate disposition of each section, whether by repeal, amendment, or retention in existing law.

During the debate in the Senate on the bill which became the Enforcement Act of May 31, 1870, Senator Sherman of Ohio introduced an amendment designed to punish voting and registration frauds in congressional elections—expressly acknowledging that it was unrelated to racial discrimination (*Cong. Globe*, 41st Cong., 2d Sess. 3663–3664 (1870)). At the instance of Senator Hamlin of Maine a section of the Sherman amendment making it criminal to interfere with meetings to discuss candidates for Congress was deleted (*Ibid.*, 3673); and the amendment was then adopted (*Ibid.*, 3678). The Sherman amendment became Sections 19 and 20 of the Act as adopted, three more sections (Sections 21, 22, and 23) being added in conference (*Ibid.*, 3752–3753, 3809, 3884). In the bill as finally enacted only Sections 1, 2, 5, 17, and 23 contained reference to discriminations based upon race, color, or previous condition of servitude.

In a rider to the Naturalization Act of July 14, 1870 (c. 254, §§ 5, 6, 16 Stat. 254), Congress provided for the appointment

House,²⁶ did not include the provisions that have since become Sections 19 and 20 of the Criminal Code. The amendment that included what became Section 6 of the original Act and is now Section 19 of the Criminal Code was introduced in the Senate by Senator Pool of North Carolina;²⁷

of supervisors and deputy marshals whose duty it would be to police congressional elections in cities of over 20,000 inhabitants. This was the first effort of Congress to provide a body of federal officials charged with actively superintending congressional elections. The Act of February 28, 1871 (c. 99, 16 Stat. 433) repealed Sections 5 and 6 of the Act of July 14, 1870, amended Section 20 of the Act of May 31, 1870, provided that all votes for representatives in Congress should thereafter be by written or printed ballot, and established an elaborate scheme for the appointment of federal supervisors and deputy marshals as overseers at the polls in congressional elections, with provisions for the punishment of a wide variety of election offenses on the part of officials and private individuals. The bill provoked considerable controversy. While KKK and similar activities were among the evils at which it was aimed (*Cong. Globe*, 41st Cong., 3d Sess., 1275-1276 (1871)), the emphasis was on corrupt political machines, particularly in New York City (*Ibid.*, 1280). The constitutional debate centered on the scope of Article I, Section 4 (*Ibid.*, 1272, 1277-1278, 1280, 1283-1284, 1632-1637).

The Act of June 10, 1872 (c. 415, 17 Stat. 347, 348) provided funds for expenses which might be incurred under the Act of February 28, 1871, and, together with the Act of May 3, 1872 (c. 139, 17 Stat. 61), amended the Act of February 28, 1871, in several unimportant respects.

²⁶ See *Cong. Globe*, 41st Cong., 2d Sess. 3503-3504 (1870).

²⁷ *Ibid.*, 3612. Senator Pool's amendment also contained the provisions which became Sections 5 and 7 of the Act as finally adopted. In offering his amendment Senator Pool stated (*Ibid.*, 3611-3612): "There is no legislation that could reach a State to prevent its passing a law. It can only reach

and the amendment that included what became Section 17 of the original Act and is now Section 20 of the Criminal Code was introduced in the Senate by Senator Stewart of Nevada, for the express purpose of protecting Chinese aliens in California from interference with their freedom

the individual citizens of the State in the enforcement of law. You have, therefore, in any appropriate legislation, to act on the citizen, not on the State. If you pass an act by which you make it an indictable offense for an officer to execute any law of a State by which he trespasses upon any of these rights of the citizen it operates upon him as a citizen, and not as an officer. *Why can you not just as well extend it to any other citizen of the country?* * * * But, sir, individuals may prevent the exercise of the right of suffrage; individuals may prevent the enjoyment of other rights which are conferred upon the citizen by the Fourteenth Amendment, as well as trespass upon the right conferred by the Fifteenth. Not only citizens, but organizations of citizens, conspiracies, may be and are, as we are told, in some of the States formed for that purpose. I see in the fourth section of the Senate bill a provision for cases where citizens by threats, intimidation, bribery, or otherwise prevent, delay, or hinder the exercise of this right; *but there is nothing here that strikes at organizations of individuals, at conspiracies for that purpose.* I believe that any bill will be defective which does not make it a highly penal offense for men to conspire together, to organize themselves into bodies, for the express purpose of contravening the right conferred by the Fifteenth Amendment. * * * It seems not to have struck those who drew either of the two bills that the prevention of the exercise of the right of suffrage was not the only or the main trouble that we have upon our hands. Suppose there shall be an organization of individuals, or if you please, a single individual, who shall take it upon himself to compel his fellow-citizens to vote in a particular way. Suppose he threatens to discharge them from employ-

of employment."²⁸ The words "and for other purposes" in the title of the bill were added at the suggestion of Senator Stewart to indicate the inclusion of his amendment.²⁹ An opponent of the bill asserted,³⁰ and Senator Stewart conceded,³¹ that the latter's amendment rested upon the Fourteenth Amendment and the Burlingame treaty with China.

There is no doubt, therefore, that the Senate was conscious of the broad scope of the bill as finally passed. And Section 6 of the original Act (the precursor of Section 19 of the Criminal

ment, to bring upon them the outrages which are being perpetrated by the Ku Klux organizations, so as not to prevent their voting, but to compel them to vote in accordance with the dictates of the party who brings this coercion upon them. It seems to me it is necessary that we should legislate against that. That is a more threatening view of the subject than the mere preventing of registration or of entering men's names upon the assessment books for taxation or of depositing the ballot in the box. * * * [Emphasis supplied.]

²⁸ Senator Stewart stated (*Ibid.*, 3658) : "Why should we not put in this bill a measure to enforce both the Fourteenth and Fifteenth Amendments at once? * * * The Fourteenth Amendment * * * says that no State shall deny to any person the equal protection of the laws. Your treaty says that they [the Chinese] shall have the equal protection of the laws. * * * We had better let the Fifteenth Amendment stand just as it does, and let it enforce itself, than attempt legislation which * * * *we know will not meet the contingencies that will arise.*" [Emphasis supplied.] Senator Stewart's amendment was adopted as Sections 16 and 17 of the Act (*Ibid.*, 3690).

²⁹ *Ibid.*, 3690.

³⁰ *Ibid.* 3672.

³¹ *Ibid.*, 3658, 3690; and see footnote 28, above.

Code) was much broader, in the scope of the rights covered by its language, than Section 17 (the precursor of Section 20 of the Criminal Code).¹² The broad purpose of Section 6 was to guarantee *all* constitutional rights *to citizens*, and to impose more severe penalties upon *conspiracies* directed at them than upon their violation by *individual conduct* as specifically proscribed by other sections. This is apparent from the interrelation of

¹² Section 6 of the original act read: "And be it further enacted, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court,—the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years,—and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the Constitution or laws of the United States." The words "any right or privilege granted or secured to him by the Constitution or laws of the United States," have remained in Section 5508 of the Revised Statutes and Section 19 of the Criminal Code, unchanged except for the deletion of the words "granted or." On the other hand, Section 17 of the original Act, both by its own terms and by its reference to "any right secured or protected by the last preceding section of this act," gave protection only against discrimination based on race, color, or alienage. But when Congress adopted the Revised Statutes, it substituted in Section 5510 thereof the broader

Section 6 with other sections of the original act.²⁷ Section 5, for example, made it a misdemeanor, punishable by fine of not less than \$500 (no maximum limit was prescribed) or imprisonment of not less than a month or more than a year, for anyone to "prevent, hinder, control, or intimidate" any person, by bribery or threats, in the exercise of the right of suffrage guaranteed to him by the Fifteenth Amendment. In view of the proximity of Section 6 to Section 5 and their common source in Senator Pool's amendment (see *supra*, p. 39, footnote 27), it can hardly be doubted that, had Congress intended the application of the former to be confined to the protection of the right of suffrage guaranteed by the Fifteenth Amendment, it would have said so, and, conversely, that had Congress intended Section 6 to have no application to conspiracies to commit the kind of invasion of the right of suffrage guaranteed by the Fifteenth Amendment which it had already proscribed to individuals by Section 5, it likewise would have said so. Instead, Section 6 expressly protected "any right or privilege" granted or secured by the Constitution or laws of the United States. The clear inference is words "any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States" that now appear in Section 20 of the Criminal Code.

²⁷ That this was also Senator Pool's purpose in introducing the amendment that included Section 6 seems equally clear (see footnote 27, *supra*, p. 39).

that Congress regarded *concert of action*, even when directed to the same ends as individual action covered by Section 5, as of a more serious character calling for more severe penalties, and that it also regarded concert of action intended to deprive citizens of *any* federal rights as of such a serious character as to require the severe penalties of Section 6 regardless of whether the particular right invaded was protected by Section 5 against individual infringement.²⁴ Such overlapping as occurred was clearly regarded as immaterial, and in its context supports, rather than negatives, the view that Section 6 is to be given the full significance that its words import, without detraction, by reason of either the enactment or the subsequent repeal of other more limited sections of the Act.

A similar interrelationship may be drawn between Section 6 and other sections of the original Act which it may appear to overlap. Section 4 applied to individual conduct (and also incidentally to conspiracies)²⁵ designed to "hinder,

²⁴ This is the obvious import of the language of Senator Pool (quoted in footnote 27, *supra*, p. 39) in sponsoring the amendment that became Sections 5, 6 and 7 of the Act.

²⁵ See Mr. Justice Holmes's statement in the *Mosley* case (238 U. S. at 387) that Section 4 "referred to conspiracies only as incident to its main purpose of punishing any obstruction to voting at any election in any State." Senator Pool emphasized, as a reason for sponsoring the amendment that included Section 6, that Section 4 did not adequately punish conspiracies directed against federal rights (see footnote 27, *supra*, p. 39).

delay, prevent, or obstruct * * * any citizen * * * from voting at any election." It was not restricted to elections at which Congressmen were chosen, as Mr. Justice Holmes pointed out in the *Mosley* case; and therefore it did not protect only federal rights as such.³⁶ Its relatively mild penalties, as contrasted with those of Section 6, again demonstrate that Congress regarded *concert of action*, directed to the deprivation of *federal* rights as such, to be of a more serious character, and justifying more severe punishment, than action of a type not depending for its criminality upon either its tendency to impair federal rights or the presence of a conspiracy to violate such rights. Similarly, Section 19 of the original Act, the repeal of which was relied on in the *Bathgate* case (*supra*, p. 33), was applicable only to elections at which Congressmen were chosen, but in relation to such elections covered all sorts of election frauds, regardless of whether they were of such a character as to impair the right of citizens to vote;³⁷ and it had no applica-

³⁶ Because of this lack of limitation it was held unconstitutional by this Court in *United States v. Reese*, 92 U. S. 214.

³⁷ For example, Section 19 made it a crime for anyone to "interfere in any manner with any officer of said elections in the discharge of his duties." There could well be many forms of interference with an election officer in the performance of his duties which would not constitute a violation or impairment of any citizen's right to vote. Section 19 also made it a crime for anyone "by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully [to] prevent any qualified voter of any State

tion to conspiracies as such, unaccompanied by the actual or attempted commission of the specifically proscribed acts. Again it is clear that Congress intended, by the sweeping language of Section 6, to make concert of action to deprive citizens of federal rights a more serious offense than the various types of individual actions covered by other sections of the Act, which might incidentally or on occasion directly impair federal rights but which were not dependent for their criminality upon their so doing.

Furthermore, although it is thus clear that the inclusion of ballot-box "stuffing" in the original Section 19 was not designed to exclude that method from the coverage of Section 6 when employed as a part of a conspiracy to deprive citizens of federal rights, we submit that the very

* * * or * * * Territory * * * from freely exercising the right of suffrage, or by any such means [to] induce any voter to refuse to exercise such right." The crime thus was made out, even if the voter subjected to such pressure was an alien qualified by the applicable state laws to vote; and it may well be doubted if influencing an alien to refrain from voting would under any circumstances constitute an impairment of a citizen's right to vote. In short, Section 19 was a measure directed at virtually all election frauds in Congressional elections; the effect of a particular fraud upon the constitutional right of qualified citizens to vote was merely incidental, and not a prerequisite of the section's application; it was a purely regulatory measure, designed to safeguard the general interest in purity of elections at which Congressmen were chosen; and it was not a measure directed to the protection of the rights of citizens as such, as was Section 6.

fact of its inclusion in Section 19 indicates that Congress had it in mind as one of the methods by which a conspiracy to defeat the federal rights of citizens might be effected, and that the later repeal of Section 19 (discussed *infra*, pp. 49-52), though it eliminated ballot-box "stuffing" as such from the catalogue of federal crimes, had no effect upon the broad prohibition of Section 6 against conspiracies to impair the federal rights of citizens by the use of that or other means of causing such impairment.*

The foregoing discussion has treated of Section 6 in its original form, as enacted as part of the Enforcement Act of May 31, 1870. There seems no doubt of the broad scope of the section, even in that form, to cover all conspiracies to defeat the

* In this connection it is clear that a statute may punish conspiracies to do acts which in themselves, if performed singly, are not criminal. Thus, it is well settled that to constitute an offense by conspiracy to defraud the United States under Section 37 of the Criminal Code (18 U. S. C. 88) "it is not necessary that the conspiracy should have been to commit an act in violation of a criminal statute." *United States v. Terranova*, 7 F. Supp. 989, 990 (N. D. Cal.); *United States v. Soeder*, 10 F. Supp. 944, 946 (W. D. Mo.), *United States v. Stone*, 135 Fed. 392, 397-398 (D. N. J.); *United States v. Gordon*, 22 Fed. 250, 251 (D. Minn.); cf. *Haas v. Henkel*, 216 U. S. 462, 479-480; *Curley v. United States*, 130 Fed. 1, 8 (C. C. A. 1), certiorari denied, 195 U. S. 628. By the same token there is no reason why the repeal of a criminal statute penalizing specific individual acts should be regarded as contracting the scope of a statute punishing conspiracies to commit such acts, particularly when the conspiracy statute was part of the same original group of statutes and was deliberately left unrepealed.

federal rights of citizens, regardless of the means used or contemplated in such conspiracies. But even if the original form of the section were to suggest some limitation upon its scope—which Mr. Justice Holmes said in the *Mosley* case (238 U. S. at 388) the Court was “far from intimating”—the congressional revision of the section adopted as Section 5508 of the Revised Statutes (and later, without further change, as Section 19 of the Criminal Code) would serve to remove all doubt. By that revision the language connoting violence was, as Mr. Justice Holmes also said (238 U. S. at 388), “dropped into a subordinate place, and even there has a somewhat anomalous sound. The section now begins with sweeping general words. Those words always were in the act, and the present form gives them a congressional interpretation.” By the revision the fact of conspiracy to “injure, oppress, threaten, or intimidate” was made the main thing, whatever the means proposed to accomplish the conspiracy. The temper of Congress, in the revision, to expand rather than contract the scope of the Act is illustrated by its treatment at the same time of Section 17 of the original Act. This section, which became Section 5510 of the Revised Statutes and later the present Section 20 of the Criminal Code, had in its original form given protection only against discriminations, “under color of any law,” based upon race, color, or alienage.³⁹

³⁹ See footnote 32, *supra*, p. 42.

By the revision it was materially enlarged to protect all persons from wilful violation in any form, "under color of any law," of "any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States"—the same all-inclusive catalogue of federal rights which in the case of citizens had been protected, by Section 6 from the beginning, against violation, in the form of conspiracies.⁴⁰ The revision thus plainly showed an intention on the part of Congress to provide the broadest possible protection to federal rights against invasions "under color of any law." Retention, in the parallel section denouncing conspiracies, of the same broad language which had existed from the beginning may properly be taken as indicative of congressional consciousness of the sweeping scope of the rights protected by Section 6 of the original Act, and

⁴⁰ We do not mean to suggest that the coverage of federal rights, by Sections 19 and 20, respectively, of the Criminal Code, is identical. The protection of Section 19 is restricted to citizens; that of Section 20 is not. As regards the methods of violation Section 19 is restricted to conspiracies; Section 20 does not apply to conspiracies as such, unaccompanied by the actual commission of the acts proscribed. To be in violation of Section 20 an act must be done "under color of any law"; under Section 19 it need not be. But that the two sections overlap is apparent from the *Classic* decision; and since the penalties of Section 19 exceed those of Section 20 the fact that the two sections have been held to overlap is of itself inconsistent with the argument that Congress could not have intended, by enacting and retaining Section 6 of the original act, to punish with severer penalties conspiracies to do acts which, if done individually, were punishable under separate provisions, now repealed, of the same act.

therefore by its modern counterpart, Section 19 of the Criminal Code.

Finally, the repeal in 1894 of a large part of the Enforcement Act of May 31, 1870, and its cognate legislation affords no justification for the view that by that action Congress intended to narrow the scope of the sections (now Sections 19 and 20 of the Criminal Code) which had become Sections 5508 and 5510 of the Revised Statutes and which were left unrepealed. The Act of February 8, 1894 (c. 25, 28 Stat. 36) was entitled "An Act to repeal all statutes *relating to supervisors of elections and special deputy marshals*, and for other purposes." [Emphasis supplied.]⁴¹ In repealing Sections 3 and 4 of the Act of May 31, 1870 (R. S. §§ 2007-2009, 5506), it merely repealed provisions relating to *all* elections which by reason of that lack of limitation had already been held unconstitutional by this Court

⁴¹ This Act repealed the following sections of the Revised Statutes: 2002, 2005-2031, 5506, 5511-5515, and 5520-5523. Section 2002 had been based on the Act of February 25, 1865 (c. 52, § 1, 12 Stat. 437), and concerned interference with elections by the Army and Navy. Sections 2005-2008 had been based on Sections 1-3 of the Enforcement Act of May 31, 1870. Section 2009 had been based on Section 4 of the 1870 Act and the supplemental Act of June 10, 1872 (c. 415, § 1, 17 Stat. 349). Section 2010 had been based on Section 23 of the 1870 Act. Sections 2011-2031 had all been based on the Acts of February 28, 1871 (c. 99, 16 Stat. 433), and June 10, 1872. Section 5506 had been based on Section 4 of the 1870 Act; Sections 5511-5515 had been based on Sections 19-21 of the 1870 Act and Section 1 of the Act of February 28, 1871; Sections 5521-5523 had been based on Sections 10

in *United States v. Reese*, 92 U. S. 214. The other sections of the Revised Statutes which were covered by the repealing act had, in the main, provided in great detail for the federal regulation, supervision, and control of all elections at which members of Congress were chosen, without regard to whether a particular practice specifically proscribed constituted an impairment of a federal right of suffrage otherwise conferred; and none of them punished conspiracies, as such, to deprive citizens of federal rights. The emphasis in the legislative committee reports and debates that preceded the enactment of the repealing statute was upon the asserted unconstitutionality of some of the sections (as pointed out above, two of them had been held unconstitutional in *United States v. Reese*) and upon the corruption that was claimed to have accompanied the control of elections by federal supervisors.⁴² Sections 5508 and 5510 of

and 11 of the latter; and Section 5520 had been a reenactment of Section 2 of the Act of April 20, 1871 (c. 22, 17 Stat. 13), entitled "An Act to enforce the Provisions of the Fourteenth Amendment * * *."

The repealing Act of 1894 also provided that "all other statutes and parts of statutes relating in any manner to supervisors of election and special deputy marshals be, and the same are hereby repealed" [emphasis supplied].

⁴² See H. Rep. No. 18, 53d Cong., 1st Sess., H. R. 2331; 25 Cong. Rec. 1803-1823, 1855-1864, 1897-1906, 1937-1963, 1987-2001, 2018-2049, 2080-2100, 2138-2150, 2158-2183, 2212-2258, 2272-2294, 2296-2327, 2338-2360, 2375-2378; 26 Cong. Rec. 382-384, 868-876, 925-934, 980-983, 1227-1231, 1237-1240, 1313-1325, 1380-1384, 1447-1452, 1580-1592, 1632-1639, 1858-1877, 1925-1941, 1976-1999.

the Revised Statutes (now Sections 19 and 20 of the Criminal Code) were not included in the repealing act, either as introduced or as passed, and we have found no trace of a suggestion by anyone at the time that either should have been included.* Yet this Court, ten years before the adoption of the repealing act, in *Ex parte Yarbrough*, 110 U. S. 651, already had held that the right of suffrage was within the protection of Section 5508 of the Revised Statutes, and had expressed exactly the same view of the scope of the federal right that was later expressed more fully in the *Classic* case (313 U. S. at 314-315), namely, that the statutes "define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. * * * It is not true, therefore, that electors for members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State" (110 U. S. at 663-664). Congress thus cannot be assumed to have been unaware, in 1894, of the fact that its

* The proximity of Sections 5508 and 5510 of the Revised Statutes (Sections 19 and 20 of the Criminal Code) to other sections of the Revised Statutes that were repealed, *viz.*; Sections 5506 and 5511-5515, is a clear enough indication that the failure to repeal Sections 5508 and 5510 was not an oversight on the part of Congress.

failure to repeal Section 5508 of the Revised Statutes left punishable by federal law conspiracies to violate federal rights by acts which, if done by a single individual, were no longer so punishable, by virtue of the repeal of other sections which had applied to them without regard to their effect upon federal rights otherwise conferred.

The Criminal Code was adopted in 1909, and again carried over without change the unrepealed Sections 5508 and 5510 of the Revised Statutes (except for certain slight verbal changes in Section 5510). Again, Congress was fully aware of the broad scope of these sections, and of the fact that the retention of Section 5508 meant continued federal prohibition against conspiracies to impair the federal rights of citizens by means of actions which, though originally covered by various sections of the Enforcement Act, were no longer punishable under federal law when committed individually. This is indicated by the statement of Senator Heyburn of Idaho, manager of the bill on the floor of the Senate, that the opposition to the whole program of codifying the federal criminal law was spurred by a purpose "on the part of the minority that the Congress of the United States shall abandon all legislation dealing with offenses against the elective franchise—the civil rights of citizens." In response to this charge Senator Daniel of Virginia, describing himself as one of the minority referred to but

disclaiming knowledge of any such purpose, submitted what he called "some references in relation to the matter referred to by the Senator from Idaho." Among these "references" was the following:

Section 5508 is carried into code bill without change. It is a general-conspiracy section; has been repeatedly held constitutional and relates to conspiracy against any right of a citizen, and has in recent years been invoked for many offenses having no relation to any race question. It is section 19 in the penal-code bill. (43 Cong. Rec. 3598-3599.)

The legislative history of Section 19 thus fully sustains the analysis made by Mr. Justice Holmes in the *Mosley* case. It indicates no reason why a conspiracy to impair by ballot-box "stuffing" the constitutional right of citizens to vote in congressional elections, is any the less within the coverage of Section 19 than conspiracies to omit from the count or to alter ballots properly cast, as in the *Mosley* and *Classic* cases. In its effects upon the constitutional right of suffrage the one type of conspiracy has been shown to be indistinguishable from the others. We therefore submit that the *Mosley* and *Classic* decisions are controlling, and that the conspiracy here involved falls within the "unambiguous" language of Section 19 which protects *all* the federal rights of citizens from conspiracies aimed at their deprivation or impairment.

CONCLUSION

On the basis of the foregoing discussion we respectfully submit that the orders of the court below, sustaining the demurrers to the indictments, should be reversed, and the cases remanded for trial.

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APRIL 1944.

APPENDIX A

[In this and the following appendices the footnote references indicate subsequent disposition made of each section by Congress, whether by repeal, amendment, or retention in existing law.]

Act of April 9, 1866 (c. 31, 14 Stat. 27):

An Act to protect all Persons in the United States in their Civil Rights, and furnish the Means of their vindication.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment,

This was the first of the three "Civil Rights" Acts. While it has not been referred to in the brief, we are setting it forth in full in order to provide in the appendices a full picture of the Civil Rights legislation of which the precursors of Sections 19 and 20 of the Criminal Code formed a part.

pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding.²

SEC. 2. And be it further enacted, That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured or protected by this act, or to different punishment, pains, or penalties on account of such person having at any time been held in a condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, or by reason of his color or race, than is prescribed for the punishment of white persons, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.³

SEC. 3. And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offences committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any

² R. S. §§ 1978, 1992; 8 U. S. C. 42.

³ See Section 18 of the Enforcement Act of May 31, 1870 (c. 114, 16 Stat. 140, 144), *infra*, p. 5.

State court, against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespasses, or wrongs done or committed by virtue or under color of authority derived from this act or the act establishing a Bureau for the relief of Freedmen and Refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the "Act relating to habeas corpus and regulating judicial proceedings in certain cases," approved March three, eighteen hundred and sixty-three, and all acts amendatory thereof. The jurisdiction in civil and criminal matters hereby conferred on the district and circuit courts of the United States shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offences against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of the cause, civil or criminal, is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern said courts in the trial and disposition of such cause, and, if of a criminal nature, in the infliction of punishment on the party found guilty.

SEC. 4. *And be it further enacted*, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, the officers and agents of the Freedmen's Bureau, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as by this act has cognizance of the offense. And with a view to affording reasonable protection to all persons in their constitutional rights of equality before the law, without distinction of race or color, or previous condition of slavery or involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of the United States and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act, and the same duties with regard

authorized by law to exercise with regard to other offences against the laws of the United States.

SEC. 5. And be it further enacted, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person upon whom the accused is alleged to have committed the offence. And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their counties respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties; and the persons so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the clause of the

Constitution which prohibits slavery, in conformity with the provisions of this act; and said warrants shall run and be executed by said officers anywhere in the State or Territory within which they are issued.*

SEC. 6. And be it further enacted, That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer, or other person charged with the execution of any warrant or process issued under the provisions of this act, or any person or persons lawfully assisting him or them, from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer, other person, or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid; or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued as aforesaid, so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the district court of the United States for the district in which said offence may have been committed, or before the proper court of criminal jurisdiction if committed within

any one of the organized Territories of the United States.

SEC. 7. *And be it further enacted,* That the district attorneys, the marshals, their deputies, and the clerks of the said district and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases; and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, inclusive of all services incident to such arrest and examination. The person or persons authorized to execute the process to be issued by such commissioners for the arrest of offenders against the provisions of this act shall be entitled to a fee of five dollars for each person he or they may arrest and take before any such commissioner as aforesaid, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of such commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recover-

able from the defendant as part of the judgment in case of conviction.⁷

SEC. 8. And be it further enacted, That whenever the President of the United States shall have reason to believe that offences have been or are likely to be committed against the provisions of this act within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons charged with a violation of this act; and it shall be the duty of every judge or other officer, when any such requisition shall be received by him, to attend at the place and for the time therein designated.⁸

SEC. 9. And be it further enacted, That it shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to prevent the violation and enforce the due execution of this act.⁹

SEC. 10. And be it further enacted, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States.

⁷ R. S. §§ 1986-1987; 8 U. S. C. 52, 53.

⁸ R. S. § 1988; 8 U. S. C. 54.

⁹ R. S. § 1989; 8 U. S. C. 55.

APPENDIX B

Enforcement Act of May 31, 1870 (c. 114, 16 Stat. 140):

An Act to enforce the Right of Citizens of the United States to vote in the several States of this Union, and for other Purposes

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That all citizens of the United States who are or shall be otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

SEC. 2. *And be it further enacted,* That if by or under the authority of the constitution or laws of any State, or the laws of any Territory, any act is or shall be required to be done as a prerequisite or qualification for voting, and by such constitution or laws persons or officers are or shall be charged with the performance of duties in furnishing to citizens an oppor-

tunity to perform such prerequisite, or to become qualified to vote, it shall be the duty of every such person and officer to give to all citizens of the United States the same and equal opportunity to perform such prerequisite, and to become qualified to vote without distinction of race, color, or previous condition of servitude; and if any such person or officer shall refuse or knowingly omit to give full effect to this section, he shall, for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just, and shall also, for every such offense, be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned for not less than one month and not more than one year, or both, at the discretion of the court.

SEC. 3. And be it further enacted, That whenever, by or under the authority of the constitution or laws of any State, or the laws of any Territory, any act is or shall be required to [be] done by any citizen as a prerequisite to qualify or entitle him to vote, the offer of any such citizen to perform the act required to be done as aforesaid shall, if it fail to be carried into execution by reason of the wrongful act or omission aforesaid of the person or officer charged with the duty of receiving or permitting such performance or offer to perform, or acting thereon, be deemed and held as a performance in law of such act; and the person so offering and failing as

² R. S. §§ 2005-2006, repealed by the Act of February 8, 1894 (c. 25, 28 Stat. 36).

aforesaid, and being otherwise qualified, shall be entitled to vote in the same manner and to the same extent as if he had in fact performed such act; and any judge, inspector, or other officer of election whose duty it is or shall be to receive, count, certify, register, report, or give effect to the vote of any such citizen who shall wrongfully refuse or omit to receive, count, certify, register, report, or give effect to the vote of such citizen upon the presentation by him of his affidavit stating such offer and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall for every such offense forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just, and shall also for every such offence be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

SEC. 4. And be it further enacted, That if any person, by force, bribery, threats, intimidation, or other unlawful means, shall hinder, delay, prevent, or obstruct, or shall combine and confederate with others to hinder, delay, prevent, or obstruct, any citizen from doing any act required to be done to qualify him to vote or from voting at any election as aforesaid, such person shall for every such offence forfeit and pay the sum of five hundred dollars to the per-

son aggrieved thereby, to be recovered by an action on the case, with full costs, and such allowance for counsel fees as the court shall deem just, and shall also for every such offence be guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

SEC. 5. And be it further enacted, That if any person shall prevent, hinder, control, or intimidate, or shall attempt to prevent, hinder, control, or intimidate, any person from exercising or in exercising the right of suffrage, to whom the right of suffrage is secured or guaranteed by the fifteenth amendment to the Constitution of the United States, by means of bribery, threats, or threats of depriving such person of employment or occupation, or of ejecting such person from rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, such person so offending shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined not less than five hundred dollars, or be imprisoned not less than one month and not more than one year, or both, at the discretion of the court.

SEC. 6. And be it further enacted, That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision

* R. S. §§ 2009, 5506, repealed by Act of February 8, 1894.

* R. S. §§ 5507, repealed by Act of March 4, 1909 (c. 321, § 341, 35 Stat. 1088; 1153-1154).

of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, or because of his having exercised the same, such persons shall be held guilty of felony, and, on conviction thereof, shall be fined or imprisoned, or both, at the discretion of the court, the fine not to exceed five thousand dollars, and the imprisonment not to exceed ten years, and shall, moreover, be thereafter ineligible to, and disabled from holding, any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

SEC. 7. And be it further enacted, That if in the act of violating any provision in either of the two preceding sections, any other felony, crime, or misdemeanor shall be committed, the offender, on conviction of such violation of said sections, shall be punished for the same with such punishments as are attached to the said felonies, crimes, and misdemeanors by the laws of the State in which the offence may be committed.

SEC. 8. And be it further enacted, That the district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses committed against the provisions of this act, and also, concurrently with the circuit courts of the United States, of all causes,

⁶ R. S. § 5508; 18 U. S. C. 51 (Section 49 of the Criminal Code).

⁷ R. S. § 5509, repealed by Act of March 4, 1909 (c. 321, § 341, 35 Stat. 1088, 1153-1154).

civil and criminal, arising under this act, except as herein otherwise provided, and the jurisdiction hereby conferred shall be exercised in conformity with the laws and practice governing United States courts; and all crimes and offences committed against the provisions of this act may be prosecuted by the indictment of a grand jury, or, in cases of crimes and offences not infamous, the prosecution may be either by indictment or information filed by the district attorney in a court having jurisdiction."

SEC. 9. And be it further enacted, That the district attorneys, marshals, and deputy marshals of the United States, the commissioners appointed by the circuit and territorial courts of the United States, with powers of arresting, imprisoning, or bailing offenders against the laws of the United States, and every other officer who may be specially empowered by the President of the United States, shall be, and they are hereby, specially authorized and required, at the expense of the United States, to institute proceedings against all and every person who shall violate the provisions of this act, and cause him or them to be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States or territorial court as has cognizance of the offense. And with a view to afford reasonable protection to all persons in their constitutional right to vote without distinction of race, color, or previous condition of servitude, and to the prompt discharge of the duties of this act, it shall be the duty of the circuit courts of

the United States, and the superior courts of the Territories of the United States, from time to time, to increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with a violation of this act; and such commissioners are hereby authorized and required to exercise and discharge all the powers and duties conferred on them by this act, and the same duties with regard to offences created by this act as they are authorized by law to exercise with regard to other offences against the laws of the United States.

SEC. 10. And be it further enacted, That it shall be the duty of all marshals and deputy marshals to obey and execute all warrants and precepts issued under the provisions of this act, when to them directed; and should any marshal or deputy marshal refuse to receive such warrant or other process when tendered, or to use all proper means diligently to execute the same, he shall, on conviction thereof, be fined in the sum of one thousand dollars, to the use of the person deprived of the rights conferred by this act. And the better to enable the said commissioners to execute their duties faithfully and efficiently, in conformity with the Constitution of the United States and the requirements of this act, they are hereby authorized and empowered, within their districts respectively, to appoint, in writing, under their hands, any one or more suitable persons, from time to time, to execute all such warrants and other process as may be issued by them in the lawful performance of their respective duties, and the persons

so appointed to execute any warrant or process as aforesaid shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged, and to insure a faithful observance of the fifteenth amendment to the Constitution of the United States; and such warrants shall run and be executed by said officers anywhere in the State or Territory within which they are issued.¹⁰

SEC. 11. And be it further enacted, That any person who shall knowingly and wilfully obstruct, hinder, or prevent any officer or other person charged with the execution of any warrant or process issued under the provisions of this act, or any person or persons lawfully assisting him or them from arresting any person for whose apprehension such warrant or process may have been issued, or shall rescue or attempt to rescue such person from the custody of the officer or other person or persons, or those lawfully assisting as aforesaid, when so arrested pursuant to the authority herein given and declared, or shall aid, abet, or assist any person so arrested as aforesaid, directly or indirectly, to escape from the custody of the officer or other person legally authorized as aforesaid, or shall harbor or conceal any person for whose arrest a warrant or process shall have been issued as aforesaid, so as to prevent his discovery and arrest after notice or knowledge of the fact that a warrant has been issued for the apprehension of such person, shall, for

¹⁰ R. S. §§ 1984-1985, 5517; 8 U. S. C. 50-51.

either of said offences, be subject to a fine not exceeding one thousand dollars, or imprisonment not exceeding six months, or both, at the discretion of the court, on conviction before the district or circuit court of the United States for the district or circuit in which said offence may have been committed, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States.¹¹

SEC. 12. And be it further enacted, That the commissioners, district attorneys, the marshals, their deputies, and the clerks of the said district, circuit, and territorial courts shall be paid for their services the like fees as may be allowed to them for similar services in other cases. The person or persons authorized to execute the process to be issued by such commissioners for the arrest of offenders against the provisions of this act shall be entitled to the usual fees allowed to the marshal for an arrest for each person he or they may arrest and take before any such commissioner as aforesaid, with such other fees as may be deemed reasonable by such commissioner for such other additional services as may be necessarily performed by him or them, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention and until the final determination of such commissioner, and in general for performing such other duties as may be required in the premises; such fees to be made up in conformity with the fees usually charged by

¹¹ R. S. § 5516, repealed by Act of March 4, 1909 (c. 321, § 341, 35 Stat. 1088, 1153-1154), but reenacted in revised form as § 141 of the Criminal Code (18 U. S. C. 246).

the officers of the courts of justice within the proper district or county as near as may be practicable, and paid out of the treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment, in case of conviction.¹²

SEC. 13. *And be it further enacted,* That it shall be lawful for the President of the United States to employ such part of the land or naval forces of the United States, or of the militia, as shall be necessary to aid in the execution of judicial process issued under this act.¹³

SEC. 14. *And be it further enacted,* That whenever any person shall hold office, except as a member of Congress or of some State legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States, it shall be the duty of the district attorney of the United States for the district in which such person shall hold office, as aforesaid, to proceed against such person, by writ of quo warranto, returnable to the circuit or district court of the United States in such district, and to prosecute the same to the removal of such person from office; and any writ of quo warranto so brought, as aforesaid, shall take precedence of all other cases on the docket of the court to which it is made returnable, and shall not be continued unless for cause proved to the satisfaction of the court.¹⁴

¹² R. S. §§ 1986-1987; 8 U. S. C. 52-53.

¹³ R. S. § 1989; 8 U. S. C. 55.

¹⁴ R. S. § 1786; 5 U. S. C. 14a.

SEC. 15. *And be it further enacted,* That any person who shall hereafter knowingly accept or hold any office under the United States, or any State to which he is ineligible under the third section of the fourteenth article of amendment of the Constitution of the United States, or who shall attempt to hold or exercise the duties of any such office, shall be deemed guilty of a misdemeanor against the United States, and, upon conviction thereof before the circuit or district court of the United States, shall be imprisoned not more than one year, or fined not exceeding one thousand dollars, or both, at the discretion of the court.¹⁵

SEC. 16. *And be it further enacted,* That all persons within the jurisdiction of the United States shall have the same right in every State and Territory in the United States to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactations of every kind, and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding. No tax or charge shall be imposed or enforced by any State upon any person immigrating thereto from a foreign country which is not equally imposed and enforced upon every person immigrating to such State from any other foreign country; and any

¹⁵ R. S. § 1787, repealed by Act of March 4, 1909 (c. 321, § 341, 35 Stat. 1088, 1153).

law of any State in conflict with this provision is hereby declared null and void.¹⁹

SEC. 17. *And be it further enacted,* That any person who, under color of any law, statute, ordinance, regulation, or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any right secured, or protected by the last preceding section of this act, or to different punishment, pains, or penalties on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and, on conviction, shall be punished by fine not exceeding one thousand dollars, or imprisonment not exceeding one year, or both, in the discretion of the court.²⁰

SEC. 18. *And be it further enacted,* That the act to protect all persons in the United States in their civil rights, and furnish the means of their vindication, passed April nine, eighteen hundred and sixty-six, is hereby re-enacted; and sections sixteen and seventeen hereof shall be enforced according to the provisions of said act.

SEC. 19. *And be it further enacted,* That if at any election for representative or delegate in the Congress of the United States any person shall knowingly personate and vote, or attempt to vote, in the name of any other person, whether living, dead, or fictitious; or vote more than once at the same election for any candidate for the same office; or vote at a place where he may not be lawfully entitled to vote; or vote without having a lawful right to vote; or do any

¹⁹ R. S. §§ 1977, 2161; 8 U. S. C. 41, 135.

²⁰ R. S. § 2310; 18 U. S. C. 52.

²¹ R. S. § 722; 28 U. S. C. 729.

unlawful act to secure a right or an opportunity to vote for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or otherwise unlawfully prevent any qualified voter of any State of the United States of America or of any Territory thereof, from freely exercising the right of suffrage, or by any such means induce any voter to refuse to exercise such right; or compel or induce by any such means, or otherwise, any officer of an election in any such State or Territory to receive a vote from a person not legally qualified or entitled to vote; or interfere in any manner with any officer of said elections in the discharge of his duties; or by any of such means, or other unlawful means, induce any officer of an election, or officer whose duty it is to ascertain, announce, or declare the result of any such election, or give or make any certificate, document, or evidence in relation thereto, to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote; or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit to do any duty the omission of which is hereby made a crime, or attempt to do so, every such person shall be deemed guilty of a crime, and shall for such crime be liable to prosecution in any court of the United States of competent jurisdiction; and, on conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or

both, in the discretion of the court, and shall pay the costs of prosecution.¹⁹

SEC. 20. And be it further enacted, That if, at any registration of voters for an election for representative or delegate in the Congress of the United States, any person shall knowingly personate and register, or attempt to register, in the name of any other person, whether living, dead, or fictitious, or fraudulently register, or fraudulently attempt to register, not having a lawful right so to do; or do any unlawful act to secure registration for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or other unlawful means, prevent or hinder any person having a lawful right to register from duly exercising such right; or compel or induce, by any of such means, or other unlawful means, any officer of registration to admit to registration any person not legally entitled thereto, or interfere in any manner with any officer of registration in the discharge of his duties; or by any such means, or other unlawful means, induce any officer of registration to violate or refuse to comply with his duty, or any law regulating the same; or knowingly and wilfully receive the vote of any person not entitled to vote, or refuse to receive the vote of any person entitled to vote, or aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit any act, the omission of which is hereby made a crime, every such person shall be deemed guilty of a crime, and shall be liable to prosecution and

¹⁹ R. S. § 5511, repealed by Act of February 8, 1894 (c. 25, 28 Stat. 369).

punishment therefor, as provided in section nineteen of this act for persons guilty of any of the crimes therein specified: *Provided*, That every registration made under the laws of any State or Territory, for any State or other election at which such representative or delegate in Congress shall be chosen, shall be deemed to be a registration within the meaning of this act, notwithstanding, the same shall also be made for the purposes of any State, territorial, or municipal election.²⁰

SEC. 21. And be it further enacted, That whenever, by the laws of any State or Territory, the name of any candidate or person to be voted for as representative or delegate in Congress shall be required to be printed, written, or contained in any ticket or ballot with other candidates or persons to be voted for at the same election for State, territorial, municipal, or local officers, it shall be sufficient *prima facie* evidence, either for the purpose of indicting or convicting any person charged with voting, or attempting or offering to vote, unlawfully under the provisions of the preceding sections, or for committing either of the offenses thereby created, to prove that the person so charged or indicted, voted, or attempted or offered to vote, such ballot or ticket, or committed either of the offenses named in the preceding sections of this act with reference to such ballot. And the proof and establishment of such facts shall be taken, held, and deemed to be presumptive evidence that such person voted, or attempted or offered to vote, for such representative or delegate, as the case may be, or that such offense was committed with refer-

²⁰ R. S. § 5512, repealed by Act of February 8, 1894.

énee to the election of such representative or delegate, and shall be sufficient to warrant his conviction, unless it shall be shown that any such ballot, when cast, or attempted or offered to be cast, by him, did not contain the name of any candidate for the office of representative or delegate in the Congress of the United States, or that such offense was not committed with reference to the election of such representative or delegate.²¹

SEC. 22. And be it further enacted, That any officer of any election at which any representative or delegate in the Congress of the United States shall be voted for, whether such officer of election be appointed or created by or under any law or authority of the United States, or by or under any State, territorial, district, or municipal law or authority, who shall neglect or refuse to perform any duty in regard to such election required of him by any law of the United States, or of any State or Territory therefrom; or violate any duty so imposed, or knowingly do any act thereby unauthorized, with intent to affect any such election, or the result thereof; or fraudulently make any false certificate of the result of such election in regard to such representative or delegate; or withhold, conceal, or destroy any certificate of record so required by law respecting, concerning, or pertaining to the election of any such representative or delegate; or neglect or refuse to make and return the same as so required by law; or aid, counsel, procure, or advise any voter, person, or officer to do any act by this or any of the preceding sections made a crime; or to omit to do any duty the omission of

²¹ R. S. § 5514, repealed by Act of February 8, 1894.

which is by this or any of said sections made a crime, or attempt to do so, shall be deemed guilty of a crime and shall be liable to prosecution and punishment therefor, as provided in the nineteenth section of this act for persons guilty of any of the crimes therein specified.²²

SEC. 23. And be it further enacted, That whenever any person shall be defeated or deprived of his election to any office, except elector of President or Vice-President, representative or delegate in Congress, or member of a State legislature, by reason of the denial to any citizen or citizens who shall offer to vote, of the right to vote, on account of race, color, or previous condition of servitude, his right to hold and enjoy such office, and the emoluments thereof, shall not be impaired by such denial; and such person may bring any appropriate suit or proceeding to recover possession of such office, and in cases where it shall appear that the sole question touching the title to such office arises out of the denial of the right to vote to citizens who so offered to vote, on account of race, color, or previous condition of servitude, such suit or proceeding may be instituted in the circuit or district court of the United States of the circuit or district in which such person resides. And said circuit or district court shall have, concurrently with the State courts, jurisdiction thereof so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the fifteenth article of amendment to the Constitution of the United States, and secured by this act.²³

²² R. S. § 5515, repealed by Act of February 8, 1894.

²³ R. S. § 2010, repealed by Act of February 8, 1894.

APPENDIX C

Act of July 14, 1870 (c. 254, 16 Stat. 254):

An Act to amend the Naturalization Laws and to punish Crimes against the same, and for other Purposes.

* * * * *

SEC. 5. *And be it further enacted*, That in any city having upwards of twenty thousand inhabitants, it shall be the duty of the judge of the circuit court of the United States for the circuit wherein said city shall be, upon the application of two citizens, to appoint in writing for each election district or voting precinct in said city, and to change or renew said appointment as occasion may require, from time to time, two citizens resident of the district or precinct, one from each political party, who, when so designated, shall be, and are hereby, authorized to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for representative in Congress, and at all times and places for holding elections of representatives in Congress, and for counting the votes cast at said elections, and to challenge any name proposed to be registered, and any vote offered, and to be present and witness throughout the counting of all votes, and to remain where the ballot-boxes are kept at all times after the polls are open until the votes are finally counted; and said persons and either of them shall have the

right to affix their signature or his signature to said register for purposes of identification, and to attach thereto, or to the certificate of the number of votes cast, *and* [any] statement touching the truth or fairness thereof which they or he may ask to attach; and any one who shall prevent any person so designated from doing any of the acts authorized as aforesaid, or who shall hinder or molest any such person in doing any of the said acts, or shall aid or abet in preventing, hindering, or molesting any such person in respect of any such acts, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment not less than one year.

SEC. 6. *And be it further enacted*, That in any city having upwards of twenty thousand inhabitants, it shall be lawful for the marshal of the United States for the district wherein said city shall be, to appoint as many special deputies as may be necessary to preserve order at any election at which representatives in Congress are to be chosen; and said deputies are hereby authorized to preserve order at such elections, and to arrest for any offence or breach of the peace committed in their view.¹

¹ The above sections of the Act of July 14, 1870, were repealed by Section 18 of the Act of February 28, 1871 (c. 99, 16 Stat. 433, 440); for which see *infra*, p. 102.

APPENDIX D.

Act of February 28, 1871 (c. 99, 16 Stat. 433):

An Act to amend an Act approved May thirty-one, eighteen hundred and seventy, entitled "An Act to enforce the Rights of Citizens of the United States to vote in the several States of this Union, and for other Purposes".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section twenty of the "Act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes," approved May thirty-one, eighteen hundred and seventy, shall be, and hereby is, amended so as to read as follows:

"SEC. 20. *And be it further enacted,* That if, [at] any registration of voters for an election for representative or delegate in the Congress of the United States, any person shall knowingly personate and register, or attempt to register, in the name of any other person, whether living, dead, or fictitious, or fraudulently register, or fraudulently attempt to register, not having a lawful right so to do; or do any unlawful act to secure registration for himself or any other person; or by force, threat, menace, intimidation, bribery, reward, or offer, or promise thereof, or other unlawful means, prevent or hinder any person having a lawful right to register from duly exercising

such right; or compel or induce, by any of such means, or other unlawful means, any officer of registration to admit to registration any person not legally entitled thereto, or interfere in any manner with any officer of registration in the discharge of his duties, or by any such means, or other unlawful means, induce any officer of registration to violate or refuse to comply with his duty or any law regulating the same; or if any such officer shall knowingly and wilfully register as a voter any person not entitled to be registered, or refuse to so register any person entitled to be registered; or if any such officer or other person whose duty it is to perform any duty in relation to such registration or election, or to ascertain, announce, or declare the result thereof, or give or make any certificate, document, or evidence in relation thereto, shall knowingly neglect or refuse to perform any duty required by law, or violate any duty imposed by law, or do any act unauthorized by law relating to or affecting such registration or election, or the result thereof, or any certificate, document, or evidence in relation thereto, or if any person shall aid, counsel, procure, or advise any such voter, person, or officer to do any act hereby made a crime, or to omit any act the omission of which is hereby made a crime, every such person shall be deemed guilty of a crime, and shall be liable to prosecution and punishment therefor as provided in section nineteen of said act of May thirty-one, eighteen hundred and seventy, for persons guilty of any of the crimes therein specified: *Provided*, That every registration made under the laws of any State or Territory for any State or

other election at which such representative or delegate in Congress shall be chosen, shall be deemed to be a registration within the meaning of this act, notwithstanding the same shall also be made for the purpose of any State, territorial, or municipal election.”¹

SEC. 2. *And be it further enacted*, That whenever in any city or town having upward of twenty thousand inhabitants, there shall be two citizens thereof who, prior to any registration of voters for an election for representative or delegate in the Congress of the United States, or prior to any election at which a representative or delegate in Congress is to be voted for, shall make known, in writing, to the judge of the circuit court of the United States for the circuit wherein such city or town shall be, their desire to have said registration, or said election, or both, guarded and scrutinized, it shall be the duty of the said judge of the circuit court, within not less than ten days prior to said registration, if one there be, or, if no registration be required, within not less than ten days prior to said election, to open the said circuit court at the most convenient point in said circuit. And the said court, when so opened by said judge, shall proceed to appoint and commission, from day to day and from time to time, and under the hand of the said circuit judge, and under the seal of said court, for each election district or voting precinct in each and every such city or town as shall, in the manner herein prescribed, have applied therefor, and to revoke, change, or renew said appointment from time to time, two

¹R. S. §§.5512-5513, repealed by Act of February 8, 1894
(c. 25; 28 Stat. 36).

citizens, residents of said city or town, who shall be of different political parties, and able to read and write the English language, and who shall be known and designated as supervisors of election. And the said circuit court, when opened by the said circuit judge as required herein, shall therefrom and thereafter, and up to and including the day following the day of election, be always open for the transaction of business under this act, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time; and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court.

SEC. 3. *And be it further enacted*, That whenever, from sickness, injury, or otherwise, the judge of the circuit court of the United States in any judicial circuit shall be unable to perform and discharge the duties by this act imposed, it shall be his duty, and he is hereby required, to select and to direct and assign to the performance thereof, in his place and stead, such one of the judges of the district courts of the United States within his circuit as he shall deem best; and upon such selection and assignment being made, it shall be lawful for, and shall be the duty of, the district judge so designated to perform and discharge, in the place and stead of the said circuit judge, all the duties, powers, and obligations imposed and conferred upon the said circuit judge by the provisions of this act.*

* R. S. §§ 2011-2013, repealed by Act of February 8, 1894.

* R. S. § 2014, repealed by Act of February 8, 1894.

SEC. 4. And be it further enacted, That it shall be the duty of the supervisors of election, appointed under this act, and they and each of them are hereby authorized and required, to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a representative or delegate in Congress, and to challenge any person offering to register; to attend at all times and places when the names of registered voters may be marked for challenge, and to cause such names registered as they shall deem proper to be so marked; to make, when required, the lists, or either of them, provided for in section thirteen of this act, and verify the same; and upon any occasion, and at any time when in attendance under the provisions of this act, to personally inspect and scrutinize such registry, and for purposes of identification to affix their or his signature to each and every page of the original list, and of each and every copy of any such list of registered voters, at such times, upon each day when any name may or shall be received, entered, or registered, and in such manner as will, in their or his judgment, detect and expose the improper or wrongful removal therefrom, or addition thereto, in any way, of any name or names.

SEC. 5. And be it further enacted, That it shall also be the duty of the said supervisors of election, and they, and each of them, are hereby authorized and required, to attend at all times and places for holding elections of representatives or delegates in Congress, and for counting the votes cast at said elections; to challenge any vote offered by any

canvassing the ballots in said boxes contained as will enable them or him to fully perform the duties in respect to such canvass provided in this act, and shall there remain until every duty in respect to such canvass, certificates, returns, and statements shall have been wholly completed, any law of any State or Territory to the contrary notwithstanding.

SEC. 7. *And be it further enacted*, That if any election district or voting precinct in any city, town, or village, for which there shall have been appointed supervisors of election for any election at which a representative or delegate in Congress shall be voted for, the said supervisors of election, or either of them, shall not be allowed to exercise and discharge, fully and freely, and without bribery, solicitation, interference, hindrance, molestation, violence, or threats thereof, on the part of or from any person or persons, each and every of the duties, obligations, and powers conferred upon them by this act and the act hereby amended, it shall be the duty of the supervisors of election, and each of them, to make prompt report, under oath, within ten days after the day of election, to the officer who, in accordance with the provisions of section thirteen of this act, shall have been designated as the chief supervisor of the judicial district in which the city or town wherein they or he served shall be, of the manner and means by which they were, or he was, not so allowed to fully and freely exercise and discharge the duties and obligations required and imposed by this act. And upon receiving any such report, it shall be the duty of the said

chief supervisor, acting both in such capacity and officially as a commissioner of the circuit court, to forthwith examine into all the facts thereof; to subpoena and compel the attendance before him of any witnesses; administer oaths and take testimony in respect to the charges made; and prior to the assembling of the Congress for which any such representative or delegate was voted for, to have filed with the clerk of the House of Representatives of the Congress of the United States all the evidence by him taken, all information by him obtained, and all reports to him made.

SEC. 8. And be it further enacted, That whenever an election at which representatives or delegates in Congress are to be chosen shall be held in any city or town of twenty thousand inhabitants or upward, the marshal of the United States for the district in which said city or town is situated shall have power, and it shall be his duty, on the application, in writing, of at least two citizens residing in any such city or town, to appoint special deputy marshals, whose duty it shall be, when required as provided in this act, to aid and assist the supervisors of election in the verification of any list of persons made under the provisions of this act, who may have registered, or voted, or either; to attend in each election district or voting precinct at the times and places fixed for the registration of voters, and at all times and places when and where said registration may by law be scrutinized, and the names of registered voters be marked for challenge; and also to attend, at all times for

holding such elections, the polls of the election in such district or precinct. And the marshal and his general deputies, and such special deputies, shall have power, and it shall be the duty of such special deputies, to keep the peace, and support and protect the supervisors of elections in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at said place of registration or polling-place, or elsewhere, and either before or after registering or voting, to arrest and take into custody, with or without process, any person who shall commit, or attempt or offer to commit, any of the acts of offences prohibited by this act, or the act hereby amended, or who shall commit any offence against the laws of the United States: *Provided*, That no person shall be arrested without process for any offence not committed in the presence of the marshal or his general or special deputies, or either of them, or of the supervisors of election, or either of them, and, for the purposes of arrest or the preservation of the peace, the supervisors of election, and each of them, shall, in the absence of the marshal's deputies, or if required to assist said deputies, have the same duties and powers as deputy marshals: *And provided further*, That no person shall, on the day or days of any such election, be arrested without process for any offence committed on the day or days of registration.

* R. S. §§ 2021-2022, repealed by the Act of February 8, 1894.

SEC. 9. And be it further enacted, That whenever any arrest is made under any provision of this act, the person so arrested shall forthwith be brought before a commissioner, judge, or court of the United States for examination of the offences alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

SEC. 10. And be it further enacted, That whoever, with or without any authority, power, or process, or pretended authority, power, or process, of any State, territorial, or municipal authority, shall obstruct, hinder, assault, or by bribery, solicitation, or otherwise, interfere with or prevent the supervisors of election, or either of them, or the marshal or his general or special deputies, or either of them, in the performance of any duty required of them, or either of them, or which he or they, or either of them, may be authorized to perform by any law of the United States, whether in the execution of process or otherwise, or shall by any of the means before mentioned hinder or prevent the free attendance and presence at such places of registration or at such polls of election, or full and free access and egress to and from any such place of registration or poll of election, or in going to and from any such place of registration or poll of election, or to and from any room where any such registration or election or canvass of votes, or of making any returns or certificates thereof, may be had, or shall molest, interfere with, remove, or eject from any such place of registration or poll of election, or of can-

vassing votes cast thereat, or of making returns or certificates thereof, any supervisor of election, the marshal, or his general or special deputies, or either of them, or shall threaten, or attempt, or offer so to do, or shall refuse or neglect to aid and assist any supervisor of election, or the marshal or his general or special deputies, or either of them, in the performance of his or their duties when required by him or them, or either of them, to give such aid and assistance, he shall be guilty of a misdemeanor, and liable to instant arrest without process, and on conviction thereof shall be punished by imprisonment not more than two years, or by fine not more than three thousand dollars, or by both such fine and imprisonment, and shall pay the costs of the prosecution. Whoever shall, during the progress of any verification of any list of the persons who may have registered or voted, and which shall be had or made under any of the provisions of this act, refuse to answer, or refrain from answering, or answering shall knowingly give false information in respect to any inquiry lawfully made, such person shall be liable to arrest and imprisonment as for a misdemeanor, and on conviction thereof shall be punished by imprisonment not to exceed thirty days, or by fine not to exceed one hundred dollars, or by both such fine and imprisonment, and shall pay the costs of the prosecution.¹⁰

SEC. 11. *And be it further enacted*, That whoever shall be appointed a supervisor of election or a special deputy marshal under the provisions of this act, and shall take the oath of office as such supervisor of

¹⁰ R. S. §§ 5522-5523, repealed by the Act of February 8, 1894.

election or such special deputy marshal, who shall thereafter neglect or refuse, without good and lawful excuse, to perform and discharge fully the duties, obligations, and requirements of such office until the expiration of the term for which he was appointed, shall not only be subject to removal from office with loss of all pay or emoluments, but shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than six months nor more than one year, or by fine not less than two hundred dollars and not exceeding five hundred dollars, or by both fine and imprisonment, and shall pay the costs of prosecution.¹¹

SEC. 12. *And be it further enacted,* That the marshal, or his general deputies, or such special deputies as shall be thereto specially empowered by him, in writing, and under his hand and seal, whenever he or his said general deputies or his special deputies, or either or any of them, shall be forcibly resisted in executing their duties under this act, or the act hereby amended, or shall, by violence, threats, or menaces, be prevented from executing such duties, or from arresting any person or persons who shall commit any offence for which said marshal or his general or his special deputies are authorized to make such arrest, are, and each of them is hereby, empowered to summon and call to his or their aid the bystanders or posse comitatus of his district.¹²

SEC. 13. *And be it further enacted,* That it shall be the duty of each of the circuit courts of the United States in and for each

¹¹ R. S. § 5521, repealed by the Act of February 8, 1894.

¹² R. S. § 2024, repealed by the Act of February 8, 1894.

judicial circuit, upon the recommendation in writing of the judge thereof, to name and appoint, on or before the first day of May, in the year eighteen hundred and seventy-one, and thereafter as vacancies may from any cause arise, from among the circuit court commissioners in and for each judicial district in each of said judicial circuits, one of such officers, who shall be known for the duties required of him under this act as the chief supervisor of elections of the judicial district in and for which he shall be a commissioner, and shall, so long as faithful and capable, discharge the duties in this act imposed, and whose duty it shall be to prepare and furnish all necessary books, forms, blanks, and instructions for the use and direction of the supervisors of election in the several cities and towns in their respective districts; to receive the applications of all parties for appointment to such positions; and upon the opening, as contemplated in this act, of the circuit court for the judicial circuit in which the commissioner so designated shall act, to present such applications to the judge thereof, and furnish information to said judge in respect to the appointment by the said court of such supervisors of election; to require of the supervisors of election, where necessary, lists of the persons who may register and vote, or either, in their respective election districts or voting precincts, and to cause the names of those upon any such list whose right to register or vote shall be honestly doubted to be verified by proper inquiry and examination at the respective places by them assigned as their residences; and to receive, preserve, and file all oaths of office of said supervisors of elec-

tion, and of all special deputy marshals appointed under the provisions of this act, and all certificates, returns, reports, and records of every kind and nature contemplated or made requisite under and by the provisions of this act, save where otherwise herein specially directed. And it is hereby made the duty of all United States marshals and commissioners who shall in any judicial district perform any duties under the provisions of this act, or the act hereby amended, relating to, concerning, or affecting the election of representatives or delegates in the Congress of the United States, to, from time to time, and with all due diligence, forward to the chief supervisor in and for their judicial district all complaints, examinations, and records pertaining thereto, and all oaths of office by them administered to any supervisor of election or special deputy marshal, in order that the same may be properly preserved and filed.¹⁵

SEC. 14. And be it further enacted, That there shall be allowed and paid to each chief supervisor, for his services as such officer, the following compensation, apart from and in excess of all fees allowed by law for the performance of any duty as circuit court commissioner: For filing and caring for every return, report, record, document, or other paper required to be filed by him under any of the provisions of this act, ten cents; for affixing a seal to any paper, record, report, or instrument, twenty cents; for entering and indexing the records of his office, fifteen cents per folio; and for arranging and transmitting to Congress, as provided for in section seven of this act,

¹⁵ R. S. §§ 2025-2027, repealed by the Act of February 8, 1894.

any report, statement, record, return, or examination, for each folio, fifteen cents; and for any copy thereof, or of any paper on file, a like sum. And there shall be allowed and paid to each and every supervisor of election, and each and every special deputy marshal who shall be appointed and shall perform his duty under the provisions of this act, compensation at the rate of five dollars per day for each and every day he shall have actually been on duty, not exceeding ten days. And the fees of the said chief supervisors shall be paid at the treasury of the United States, such accounts to be made out, verified, examined, and certified as in the case of accounts of commissioners, save that the examination or certificate required may be made by either the circuit or district judge.¹⁴

SEC. 15. *And be it further enacted,* That the jurisdiction of the circuit court of the United States shall extend to all cases in law or equity arising under the provisions of this act or the act hereby amended; and if any person shall receive any injury to his person or property for or on account of any act by him done under any of the provisions of this act or the act hereby amended, he shall be entitled to maintain suit for damages therefor in the circuit court of the United States in the district wherein the party doing the injury may reside or shall be found.¹⁵

SEC. 16. *And be it further enacted,* That in any case where suit or prosecution, civil or criminal, shall be commenced in a court of any State against any officer of the

¹⁴ R. S. § 3689; 31 U. S. C. 711.

¹⁵ R. S. § 629; 28 U. S. C. 41 (2).

United States, or other person, for or on account of any act done under the provisions of this act, or under color thereof, or for or on account of any right, authority, or title set up or claimed by such officer or other person under any of said provisions, it shall be lawful for the defendant in such suit or prosecution, at any time before trial, upon a petition to the circuit court of the United States in and for the district in which the defendant shall have been served with process, setting forth the nature of said suit or prosecution, and verifying the said petition by affidavit, together with a certificate signed by an attorney or counsellor at law of some court of record of the State in which such suit shall have been commenced, or of the United States, setting forth that as counsel for the petitioner he has examined the proceedings against him, and has carefully inquired into all the matters set forth in the petition, and that he believes the same to be true, which petition, affidavit, and certificate shall be presented to the said circuit court, if in session, and, if not, to the clerk thereof at his office, and shall be filed in said office, and the cause shall thereupon be entered on the docket of said court, and shall be thereafter proceeded in as a cause originally commenced in that court; and it shall be the duty of the clerk of said court, if the suit was commenced in the court below by summons, to issue a writ of certiorari to the State court, requiring said court to send to the said circuit court the record and proceedings in said cause; or if it was commenced by capias, he shall issue a writ of habeas corpus cum causa, a duplicate of which said writ shall be de-

livered to the clerk of the State court, or left at his office by the marshal of the district, or his deputy, or some person duly authorized thereto; and thereupon it shall be the duty of the said State court to stay all further proceedings in such cause, and the said suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be deemed and taken to be moved to the said circuit court, and any further proceedings, trial, or judgment therein in the State court shall be wholly null and void; and any person, whether an attorney or officer of any State court, or otherwise, who shall thereafter take any steps, or in any manner proceed in the State court in any action so removed, shall be guilty of a misdemeanor, and liable to trial and punishment in the court to which the action shall have been removed, and upon conviction thereof shall be punished by imprisonment for not less than six months nor more than one year, or by fine not less than five hundred nor more than one thousand dollars, or by both such fine and imprisonment, and shall in addition thereto be amenable to the said court to which said action shall have been removed as for a contempt; and if the defendant in any such suit be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of habeas corpus cum causa, to take the body of the defendant into his custody, to be dealt with in the said cause according to the rules of law and the order of the circuit court, or of any judge thereof in vacation. And all attachments made and all bail or other security given upon such suit or prosecution shall be and continue in

like force and effect as if the same suit or prosecution had proceeded to final judgment and execution in the State court. And if upon the removal of any such suit or prosecution it shall be made to appear to the said circuit court that no copy of the record and proceedings therein in the State court can be obtained, it shall be lawful for said circuit court to allow and require the plaintiff to proceed *de novo*, and to file a declaration of his cause of action, and the parties may thereupon proceed as in actions originally brought in said circuit court; and on failure of so proceeding judgment of non *prosequitur* may be rendered against the plaintiff, with costs for the defendant.¹⁸

SEC. 17. And be it further enacted, That in any case in which any party is or may be by law entitled to copies of the record and proceedings in any suit or prosecution in any State court, to be used in any court of the United States, if the clerk of said State court shall, upon demand and the payment or tender of the legal fees, refuse or neglect to deliver to such party certified copies of such record and proceedings, the court of the United States in which such record and proceedings may be needed, on proof by affidavit that the clerk of such State court has refused or neglected to deliver copies thereof on demand as aforesaid, may direct and allow such record to be supplied by affidavit or otherwise, as the circumstances of the case may require and allow; and thereupon such proceeding, trial, and judgment may be had in the said court of the United States, and all such processes awarded, as if certified copies of such

¹⁸ R. S. §§ 643, 646.

records and proceedings had been regularly before the said court; and hereafter in all civil actions in the courts of the United States either party thereto may notice the same for trial."

SEC. 18. *And be it further enacted*, That sections five and six of the act of the Congress of the United States approved July fourteen, eighteen hundred and seventy, and entitled "An act to amend the naturalization laws, and to punish crimes against the same," be, and the same are hereby, repealed; but this repeal shall not affect any proceeding or prosecution now pending, for any offence under the said sections, or either of them, or any question which may arise therein respecting the appointment of the persons in said sections, or either of them, provided for, or the powers, duties, or obligations of such persons.

SEC. 19. *And be it further enacted*, That all votes for representatives in Congress shall hereafter be by written or printed ballot, any law of any State to the contrary notwithstanding; and all votes received or recorded contrary to the provisions of this section shall be of none effect."

¹¹ R. S. §§ 645, 930; 28 U. S. C. 769.

¹² R. S. § 27; 2 U. S. C. 9.